



# ENVIRONMENTAL ASSESSMENT BOARD

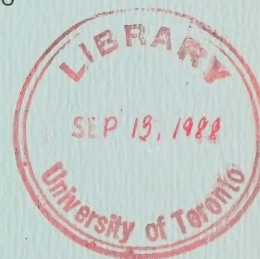
VOLUME: XLII

DATE: Thursday, September 1st, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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# ENVIRONMENTAL ASSESSMENT BOARD

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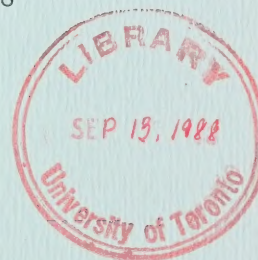
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

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Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Thursday, September 1st,  
1988, commencing at 8:30 a.m.

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VOLUME XLII

BEFORE:


MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member





A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	



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APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	PRODUCTS
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON





(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





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1       ---Upon commencing at 8:35 a.m.

2                   THE CHAIRMAN: Good morning, ladies and  
3 gentlemen. Please be seated.

4                   MS. MURPHY: I think I have the honour of  
5 going first today.

6                   THE CHAIRMAN: Well, just before you go  
7 Mr. Murphy --

8                   MR. MARTEL: Ms. Murphy.

9                   THE CHAIRMAN: Did I call you Mr. Murphy?

10                  MS. MURPHY: I wasn't going to mention  
11 it.

12                  THE CHAIRMAN: That obviously was a  
13 result of a harrowing experience I had in the U.S.  
14 yesterday.

15                  MR. CAMPBELL: Serves you right.

16                  THE CHAIRMAN: Ms. Murphy, just before we  
17 go on, the Board would like to make a very brief  
18 opening statement relative to the matters that we are  
19 going to consider today.

20                  As all of you are aware, the motions that  
21 the Board is about to hear involve a request by Mr.  
22 Castrilli to --

23                  MR. CAMPBELL: Mr. Chairman, I am sorry.  
24 Mr. Castrilli has not arrived yet. I assume he will be  
25 here momentarily. I wonder, in light of it being his

1 motion, that we should perhaps wait.

2 THE CHAIRMAN: All right. Very well, I  
3 think that is fair.

4 MR. HUNTER: I am going to phone him and  
5 see if he has left, I presume he has.

6 ---Short recess.

7 MR. HUNTER: As always, his sense of  
8 timing is impeccable.

9 THE CHAIRMAN: He is here.

10 MR. MARTEL: He found his way.

11 MR. HUNTER: He made it.

12 MR. CASTRILLI: Good morning, Mr.  
13 Chairman, my apologies for the delay.

14 THE CHAIRMAN: Very well, Mr. Castrilli.

15 I was just about to embark upon a brief  
16 opening statement by the Board prior to hearing from  
17 Ms. Murphy on the matters before us today.

18 Now, ladies and gentlemen, the motions the  
19 Board is about to hear involve a request by Mr.  
20 Castrilli to reconsider the Board's previous directives  
21 relative to the production of witness statements,  
22 particularly those of the proponent which, if agreed to  
23 by the Board, will have the effect of adjourning this  
24 hearing for a period of several months.

25 Well, obviously, the Board cannot reach a



1 decision and does not intend to on any of the motions  
2 before it today until after we have heard all  
3 submissions by the parties. We do wish to place on the  
4 record some basic concerns of the Board which may help  
5 you to focus your submissions to us today.

6 As you are aware, the Board has attempted  
7 since the commencement of these proceedings to canvass  
8 various ways to expedite the presentation of the  
9 evidence without in any way sacrificing the principles  
10 of fairness which must prevail at all times. To this  
11 end we have directed our minds earlier to the manner in  
12 which witness statements and interrogatories would be  
13 handled and we issued procedural directives to deal  
14 with these matters.

15 Also earlier in these proceedings we  
16 canvassed the possibility of limiting the time for the  
17 presentation of oral direct evidence and of encouraging  
18 the parties to consider ways in which to place before  
19 the Board agreed upon evidence in the manner of agreed  
20 statements of fact, and we have also endeavoured to  
21 encourage the parties to take whatever other steps they  
22 can to expedite the proceedings.

23 In almost all of the efforts made by the  
24 Board to date to encourage the parties to seriously  
25 consider ways to more efficiently and effectively put

1 the evidence before the Board, in the Board's opinion,  
2 we have been singularly unsuccessful, and it is in this  
3 frame of mind that we approach the motions before us  
4 today.

5 Therefore, we want to make it clear at  
6 the outset that we are unlikely to agree to any  
7 adjournment whatsoever which will not, in effect,  
8 guarantee that the overall number of hearing days will  
9 not be increased as a result of any proposed  
10 adjournment and, therefore, the Board would ask all of  
11 the parties when addressing the Board on the matters  
12 before us to bear this in mind.

13 We have to have assurances, almost in the  
14 form of a guarantee, that the overall number of hearing  
15 days will not be increased if the Board should  
16 reconsider its previous directives with respect to the  
17 filing of witness statements and any of the other  
18 matters you wish to address in terms of changing the  
19 procedure that has occurred to date.

20 We are not against the principle of  
21 adjourning the proceedings if, by doing so, there is a  
22 clear understanding on the part of everybody that we  
23 will ultimately in the end be saving time. And it is  
24 in this light that the Board would ask you to focus  
25 your submissions to us today.



1 Thank you.

2 MR. CASTRILLI: Mr. Chairman, just before  
3 Ms. Murphy begins I just want to make a brief  
4 commentary with respect to her proposal in an attempt  
5 to bridge the two motions that are before you and I  
6 will defer to Ms. Murphy with respect to actually  
7 having her set out in detail what the proposal she is  
8 making is, with the assistance of the microphone.

9 MR. COSMAN: Mr. Chairman, perhaps there  
10 are just a few procedural rules that have to be  
11 established right now.

12 There are two motions -- or three motions  
13 before you; one isn't a contentious step being the  
14 motion by the Ministry with respect to the site visits.  
15 There are two other motions, there is mine and Mr.  
16 Castrilli's. I have no objection to Mr. Castrilli  
17 going first and he, obviously, has a right to reply  
18 with respect to his motion. With respect to my motion,  
19 I also expect to have the same right of reply with  
20 respect to that motion.

21 I don't think they have to follow each  
22 other because, to a certain extent, they are linked. I  
23 am prepared to address you on both rather than standing  
24 up twice, if you think that will be helpful.

25 THE CHAIRMAN: Well, would it not make

1 more sense, Mr. Castrilli, to have you present your  
2 side, since it is your motion, as to what you want and  
3 then also have Mr. Cosman, since his is related in  
4 effect, present his submission and then have the  
5 Ministry respond. Because, in effect, I think the  
6 Ministry will be responding to both and all the other  
7 parties can address both.

8 MR. CASTRILLI: Well, Mr. Chairman, what  
9 I was going to suggest is that in addition to the two  
10 motions you have before you, there is also a proposal  
11 by the Ministry, as you are aware, to bridge the intent  
12 of both motions and my clients are in support of  
13 certain elements of the Ministry proposal and are, in  
14 fact, prepared to accept those portions of that  
15 proposal that relate to our motion with certain  
16 additional conditions which, I understand, Ms. Murphy  
17 will be putting forward, which are not actually  
18 contained in the written statement.

19 We do not, however, support other  
20 elements of the Ministry proposal respecting the motion  
21 brought by the industry. So for greater coherence we  
22 thought it would be appropriate to have the Board first  
23 hear the MNR proposal as it relates to both motions  
24 and what I suspect will in fact transpire is that there  
25 will be consensus on the Ministry proposal as it

1 relates to my motion with certain additions, or  
2 conditions and qualifications. And then I suspect what  
3 will follow will be argument on the industry motion  
4 itself.

5 So, in that sense, I am suggesting that  
6 Ms. Murphy go first.

7 MR. CAMPBELL: Mr. Chairman, I would  
8 support that procedure as well.

9 In light of your remarks this morning, I  
10 should note that there has been an attempt by counsel  
11 to get together and work out at least the bones of the  
12 proposal to which all will agree to a greater or lesser  
13 degree, and I think that Ms. Murphy should proceed in  
14 the way that Mr. Castrilli has outlined.

15 THE CHAIRMAN: All right, in the manner  
16 that you --

17 MR. COSMAN: I will support that, Mr.  
18 Chairman.

19 THE CHAIRMAN: All right. I think it  
20 would be advisable for Ms. Murphy to go first since  
21 counsel have obviously gotten together and have focused  
22 their arguments in response to the Ministry's proposal.

23 MS. MURPHY: Yes. Mr. Chairman, it  
24 really was in a very real effort to expedite matters  
25 that we looked at the two Notices of Motion and



1 commenced discussion with a number of counsel to  
2 attempt to find a practical way to deal with the  
3 problems that are raised and, at the same time, look  
4 very strongly at how those problems could be addressed  
5 without, first of all, losing inordinate amounts of  
6 time and, secondly, while adding to it, some formal  
7 mechanism that would allow us to in fact give some kind  
8 of assurance that perhaps these proposals could lead  
9 towards scoping, towards understanding what the real  
10 issues are.

11 And one other thing before we begin,  
12 basically there are three matters, as I understand it,  
13 that are perhaps on the agenda today. The first one  
14 being these motions, the second -- I understand that  
15 there is to be some discussion of some issues on  
16 scheduling for Panel 6 and that a number of the counsel  
17 that have some concerns about that are here and I  
18 believe Mr. Freidin would be speaking to that.

19 And, finally, we do have our Notice of  
20 Motion for directions on the site visit. We are  
21 hopeful that we can get to that today. I assume if we  
22 can't we would put it over, but we do have real and  
23 perhaps naive hope that we can deal with this first  
24 issue fairly expeditiously.

25 We can advise you that we have had

1 discussions on this with Mr. Campbell, Mr. Castrilli,  
2 Mr. Cassidy and Mr. Cosman and we have also spoken to  
3 Mr. Edwards, Mr. Hunter and Mr. Williams in an effort  
4 to put together a proposal that would satisfy to some  
5 degree all of those people.

6 I believe what you will need before you  
7 would be the Notice of Motion for Forests for Tomorrow  
8 from the Canadian Environmental Law Association and  
9 Notice of Motion for Ontario Forest Industry  
10 Association, unfortunately I don't have extra copies of  
11 those.

12 THE CHAIRMAN: Mr. Mander does.

13 MS. MURPHY: And also, Mr. Chairman, my  
14 letter of August 26, 1988. I have extra copies of that  
15 letter if you require them.

16 Do you have it?

17 MRS. KOVEN I don't have a copy of your  
18 letter.

19 MS. MURPHY: I prefer you use those  
20 copies. The ones I have here were taken from my friend  
21 Mr. Freidin and that means that they have marks on  
22 them. He always makes notes.

23 Mr. Chairman, basically our situation is  
24 this in our view: While the grounds for the two  
25 motions that are before you, the reasons for asking for

1 changes in the procedure appear to be perhaps  
2 different. It is our view that the essential concern  
3 raised in both is really the same. In both cases the  
4 parties are raising concerns about procedural fairness  
5 or natural justice. Both parties are suggesting that  
6 there may be a better way to ensure that they, first,  
7 have an opportunity to know and consider the case they  
8 have to meet and, second, an opportunity to organize  
9 and present their response and, of course, those are  
10 the fundamental things that make up natural justice.

11 Now, in earlier discussions before this  
12 Board on other matters, Mr. Chairman, the Ministry of  
13 Natural Resources has emphasized that we take very  
14 seriously our responsibility to do everything we can to  
15 ensure procedural fairness in these hearings to all  
16 parties. The concern is not altogether ultraistic, it  
17 is based on a very real concern that should any party  
18 take actions which could result in the failure of  
19 natural justice to any other, we are all in real  
20 jeopardy. It is entirely possible if that happened  
21 that a review in court could find such a failure to be  
22 significant and that could result, of course, in  
23 quashing the Board's decision. Perhaps more realistic  
24 but of all equal concern is the appearance of a lack of  
25 fairness which could undermine the confidence of some



1 person in the final decision of the Board.

2 There are a number of persons with varying  
3 interests who are bringing their case before the Board  
4 in this matter and all of them, with all of their  
5 varying interests, of course, have the right to feel  
6 that they have had a fair hearing, a right to be heard.

7 At the same time, of course, there is a  
8 very strong competing interest and that is to deal with  
9 these matters expeditiously and an efficiently. We  
10 agree that we must explore ways to promote efficiency  
11 in the process in any way possible that does not  
12 conflict with the principles of fairness. That is, we  
13 must finds ways to accomodate those needs without  
14 losing unreasonable amounts of time.

15 In addition, as you say yourself, Mr.  
16 Chairman, a procedure, if we look at a new one, should  
17 be designed so that there is a real chance of 'scoping,  
18 of really streamlining these hearings and that was very  
19 much in our mind in putting together our proposal. So  
20 after looking at these Notices of Motion and discussion  
21 with a number of counsel we have made a proposal. It  
22 is our attempt to bring together the basic concerns of  
23 all parties and deal with them ccmprehensively and, as  
24 you have heard this morning, in speaking to counsel, it  
25 is our feeling that there is some general support.

1                   I would add that like any proposal of  
2                   this nature, I imagine there is not a single person  
3                   here who is a hundred per cent satisfied and like any  
4                   compromise, that's probably an indication of a good  
5                   compromise.

6                   If you will then take a look at my letter  
7                   and I will go through the proposal and perhaps answer a  
8                   few questions that have been raised by some of the  
9                   other people that have looked at the proposal.  
10                  Beginning on page 2. I have an extra copy if you --

11                  Towards the bottom of the page. The  
12                  following proposal is an attempt to take all of the  
13                  concerns raised in these Notices of Motion and  
14                  accomodate them in a comprehensive way.

15                  Our proposal is: In the month of  
16                  September that the Ministry would provide the witness  
17                  statements for Panels 8, 9 and 10. 8 has already been  
18                  provided and our proposal would also indicate that with  
19                  those witness statements we would have in the covering  
20                  letters, as we have done to date, an identification of  
21                  a day some time between 30 an 40 days thereafter for  
22                  receipt of interrogatories.

23                  We have found that without some kind of a  
24                  specified date it is difficult for us to know when to  
25                  expect those interrogatories. It is very difficult for

1 the people, especially those who are not attending the  
2 hearing, to know when they should be submitting them.  
3 Of course, we have never turned any down because they  
4 have come in later than that date, but it has been  
5 helpful to us just for organization.

6 We note that on September 29th there is  
7 currently a plan that the hearing would adjourn for the  
8 October break and that's written down. We would then  
9 suggest that we reconvene on November 1st and that at  
10 that time we would be putting in and having  
11 cross-examination on Panel 7.

12 It is our concern that we lose as little  
13 hearing time as possible, and it is our view that the  
14 hearing should not close after the September hearing  
15 days but, instead, should continue at least with Panel  
16 7 and finish that evidence-in-chief and  
17 cross-examination.

18 It is also our proposal that at some time  
19 in that month - and this is the matter of our second  
20 motion - it would be useful to use some of that time to  
21 engage in a second site visit, and that is noted at the  
22 top of the following page. As you are aware, that's  
23 the subject of another motion this morning.

24 So, again, it is our view that we could  
25 usefully use all of November or a good portion of it.



1 Our proposal then suggests that after Panel 7 is  
2 complete and after the site visit is complete, that the  
3 hearing would adjourn to a fixed date, February 1st.

4 If you will recall, Mr. Chairman, the  
5 original Notice of Motion from the Canadian  
6 Environmental Law Association suggested February 1st or  
7 some other time 60 days after the production of all  
8 witness statements and that, again -- not only is it  
9 not a fixed date which causes us some concern, but it  
10 is also the potential for moving it even further back,  
11 and we suggest that there are ways to deal with the  
12 issues without moving it further than February 1st.  
13 And those are the matters that we suggest following:

14 That in the month of December the Ministry  
15 of Natural Resources would provide the statements of  
16 evidence for Panels 11, 12, 13 and 14. We would also  
17 suggest that there would be attached to those proposed  
18 dates for receipt of interrogatories.

19 You will recall perhaps, Mr. Chairman,  
20 there was some discussion about the original Order of  
21 the Board which provided for interrogatories from  
22 persons receiving the witness statements 30 days after  
23 service, and at the time I recall, Mr. Chairman, saying  
24 to Mr. Freidin: Make sure you don't serve all of your  
25 panels at once because then people won't be able to

1       respond.

2                       This is in fact the issue that I believe  
3       Mr. Castrilli was dealing with in his second part of  
4       his prayer for relief because he was concerned about  
5       that very thing. And I am suggesting that, again,  
6       there should be serial dates and, if it is acceptable,  
7       perhaps we could clear those dates with the Board  
8       through Mr. Mander, if that would make people more  
9       comfortable.

10                      Following that, we note that there would  
11       normally be a Christmas break, this is in order for us  
12       to have some reasonable assessment of how much time --  
13       how much actual hearing time we would need to make up.

14                      And, finally, our proposal suggests that  
15       in the month of January, prior to the commencement of  
16       the hearing -- the reconvening of the hearing, that MNR  
17       would provide statements of evidence for all of the  
18       remaining panels; that is, Panels 15, which I am sure  
19       and I understand people have been waiting for for some  
20       time and will be interested in seeing, Panel 16 and  
21       Panel 17. Those are all of them.

22                      THE CHAIRMAN: Are you only suggesting at  
23       this point that your case will be completed with the  
24       filing of panel...

25                      MS. MURPHY: 17 is the last panel.

1                   THE CHAIRMAN: 17. So you haven't gone  
2 any further than that? There was some talk during the  
3 evidence that you might be adding a panel or panels on  
4 the other end, Mr. Freidin. I just wondered --

5                   MS. MURPHY: Well, I don't think there is  
6 any intention to add any panels. The idea of the  
7 subject matters of the panels is that they would remain  
8 the same so that we all know what we are talking about.

9                   There is a possibility, for example, when  
10 looking at Panel 15 that we would say Panel 15 might be  
11 presented in two pieces, if that's the most convenient  
12 way to deal with it. But we certainly wouldn't be  
13 adding anything at the end. If we are going to add  
14 anything to anything that you have heard about to date,  
15 it would be put into one of these pieces.

16                  THE CHAIRMAN: Very well.

17                  MS. MURPHY: You will appreciate, during  
18 preparation of this over the last two or three years,  
19 these panels have had all kinds of different names and  
20 we have decided we would like to stay with the one from  
21 now on because it confuses us.

22                  The point then is that at the end of  
23 January MNR would have produced all of their witness  
24 statements and would have produced answers to  
25 interrogatories up to and including at least Panel 10,

1 if not more than that and so that all parties will have  
2 had that material in their hands for a substantial  
3 length of time and that we could then reconvene at that  
4 fixed date, February 1st, and continue until all of the  
5 evidence and cross-examination of the Ministry's case  
6 is complete.

7 That takes us to February and those are  
8 the dates which we propose as fixed dates.

9 The next part of the proposal is that  
10 part which we are proposing and suggesting and quite  
11 strongly put forward as a very important part of the  
12 proposal and that is: The pieces of the proposal which  
13 we believe would have the effect of allowing us all to  
14 focus on issues; put, in effect, our cards on the  
15 table.

16 You will note that those two matters at  
17 this time I have time to be fixed. I am not suggesting  
18 that those times be fixed today, it is the principles  
19 that are important. So with the first one, time to be  
20 fixed - and I will speak about the principle I have in  
21 mind in a moment - but the idea is that prior to the  
22 completion of the Ministry's case, MNR will provide to  
23 all parties a concise summary of the decision which MNR  
24 is seeking from the Environmental Assessment Board in  
25 this matter, including proposed terms and conditions.



1                   This would be our attempt to pull  
2           together at one point in time, in effect, one piece of  
3           paper, our prayer for relief, our Order sought.

4                   What we are suggesting, Mr. Chairman, is  
5           that that time would be fixed at such time as we are  
6           all certain that Panel 15 evidence will have been put  
7           in, the cross-examination over. It is our view that  
8           our list of terms and conditions is probably best given  
9           to other people once we have gone through the  
10          activities that we need to lead evidence on and that  
11          planning process that Panel 15 -- that pulls together  
12          in the process -- on the process side, the matters that  
13          we are dealing with.

14                  And we are suggesting that we put ours in  
15          at that time and that within a specific time  
16          thereafter, another time to be fixed, all of the other  
17          parties who intend to propose terms and conditions of  
18          approval would be required to file with the  
19          Environmental Assessment Board a formal statement of  
20          their proposed terms and conditions of approval for  
21          this Class Environmental Assessment; in effect, a  
22          response. And you will note that we have suggested  
23          that this would take place prior to the completion of  
24          the Ministry's case.

25                  That's very important, Mr. Chairman, and

1 let me explain. It is only when we can sit down and  
2 look at the written and formal and seriously thought  
3 out suggestions of all parties that we are going to be  
4 able to look at them and say to people, for example:  
5 We believe that this thing that you are asking for is  
6 dealt with in such and such a proposal of ours and deal  
7 with that or, in fact, we think that this thing you are  
8 asking for is a good idea and we are prepared to put it  
9 in our case.

10 But until that -- or in fact, of course  
11 Mr. Chairman, we think such and such a proposal is not  
12 a good idea and perhaps give some reasons why. It is  
13 our suggestion that that is one of the major and main  
14 tools that can be used to scope to, in effect, and  
15 hopefully shorten this hearing.

16 MRS. KOVEN: Excuse me. The timing of  
17 that you would put --

18 MS. MURPHY: We would put in -- at this  
19 stage I would think it would probably work something  
20 like this.

21 MRS. KOVEN: After Panel 15?

22 MS. MURPHY: After Panel 15 we would put  
23 in a formal set of proposed terms and conditions.

24 MRS. KOVEN: And you would expect the  
25 other parties to put theirs in before the end of 17?

1 MS. MURPHY: Before the end of 17, I  
2 would think. 17, of course, is the last panel which  
3 just deals with alternatives to the undertaking and I  
4 would expect -- we would probably be looking at a time  
5 period there of approximately 30 days, so that those  
6 things can be on the table and then we carry on without  
7 perhaps taking an adjournment.

8 Mr. Chairman, I think you will find that  
9 many of the people -- this is really and primarily  
10 directed, of course, to the people who are here in  
11 full-time attendance, who have a lot of interest in  
12 this matter and who have been thinking about this for  
13 some time.

14 And I believe you will find that those  
15 parties who have taken a real interest and have been  
16 involved in this matter for some time do have a pretty  
17 clear idea what they want and they are looking for more  
18 information from us, fair enough, but I think you will  
19 find in speaking to some of them at least that they  
20 think it is possible for them to do that.

21 THE CHAIRMAN: Why do you not have a  
22 clear idea at this time what you want?

23 MS. MURPHY: Well, in fact it is our view  
24 of course that we do, that it's writting in the  
25 Environmental Assessment Document, that it has been

1 part of the evidence of the proponent, that there are  
2 things put forward in the response to the government  
3 review document and, in effect, at this point in time  
4 it would probably be putting together on a piece of  
5 paper the pulling together of all of those things.

6 It is our view, however, that it would be  
7 most useful for people to see the whole piece, the  
8 whole sort of body of the proposals once they have  
9 heard the evidence, have in their hands all of the  
10 witness statements and, in our view, it probably be  
11 most useful to them after they have heard the evidence  
12 of Panel 15. It seems to us to be the most useful and  
13 sensible time for people to consider those.

14 If I might go to the last part of that...

15 MR. MARTEL: Before you do. Am I hearing  
16 you right when you say that you would attempt to scope  
17 after Panel 15 when you have presented your case and  
18 then you are expecting the opposition to present that  
19 case and it is only at that time you are going to  
20 attempt to scope?

21 MS. MURPHY: Well, of course not, Mr.  
22 Martel. Those attempts have been going on from day one  
23 and, in fact, you will be able to see in responses, for  
24 example, to the government review document there are a  
25 number of things that are being put forward in evidence



1 here and during the hearing and have been to date, they  
2 are done specifically in response to those things that  
3 were put forward at that time. And many of the things,  
4 of course, that were in the Environmental Assessment  
5 Document itself, in the amendment to the document and  
6 in evidence that's been put forward, are all in  
7 response and are all attempts to deal with issues that  
8 have been raised. It has certainly never been cast in  
9 rock.

10 THE CHAIRMAN: Ms. Murphy, tell me this:  
11 I know that you have been - and I assume that you have  
12 been busily preparing witness statements all along,  
13 future witness statements - you may not have all of the  
14 material put together with respect to each statement,  
15 and that is one of reasons they are staggered in terms  
16 of their production, but do you not at this point in  
17 time have an idea of the gist of what will be contained  
18 in each witness statement for all the panels,  
19 notwithstanding that you may not have all the  
20 supplementary material gathered together upon which the  
21 witnesses will rely in the giving of their evidence?

22 I guess the first question is: Do you not  
23 have an overall sense of evidence which will be given  
24 by each witness panel right up to 17 at this point in  
25 time?

1 MS. MURPHY: Well, certainly there is an  
2 overall sense, sir. We have put together during the  
3 preliminary hearings --

4 THE CHAIRMAN: Beyond just the agenda,  
5 beyond the very concise one or two pages indicating  
6 what topics the individual panels will deal with; do  
7 you not have in fact a good portion of the submissions  
8 to be made by the witnesses in each panel completed at  
9 this point in time?

10 MS. MURPHY: At this point in time we  
11 have a good idea of who goes in each panel and what  
12 they are going to be talking about and, to a large  
13 degree, some of the documentation. However, you will  
14 note from Mr. Castrilli's motion and I believe this is  
15 the real gist of what people are looking for, they are  
16 looking for those reports, those written documents that  
17 we have been putting in and those are not all complete.  
18 We are not in a position to be able to hand those over  
19 at this time.

20 THE CHAIRMAN: Well, put it this way,  
21 without even handing them over: Are you in a position  
22 to list them?

23 MS. MURPHY: No, sir.

24 THE CHAIRMAN: And how long would that  
25 take?

1 MS. MURPHY: Well, it was in looking at  
2 that very issue and in looking at what people have been  
3 asking for which is a production of the entire --  
4 excuse me, Joe -- production of the entire body of  
5 material that I took a close look at it and, in all  
6 honesty, can say that I really feel that we can only  
7 put together the material that people are asking for by  
8 February 1st.

9 And I would add, Mr. Chairman, if I  
10 might, that this has not been an easy task, but I would  
11 also add that if, on top of this - if you are  
12 considering this - if on top of it we are asked to  
13 produce something else, that could give us difficulty  
14 in producing what we are attempting to produce.

15 THE CHAIRMAN: Well, let's deal with it  
16 this way. You may not have the entire witness  
17 statements prepared until the dates you are suggesting  
18 in terms of when you will be able to produce them in  
19 their entirety, but surely at this point in time you  
20 could provide the parties with a much better indication  
21 of what they are going to meet later on then they  
22 received during the preliminaries on that one or  
23 two-page agenda, just listing the topics to be dealt  
24 with by a particular panel.

25 THE CHAIRMAN: Part of the reasons for

1 the motion before us today and the submissions most  
2 probably to be made by the parties concerning  
3 procedural fairness is the fact that they do not  
4 have -- they do not feel they have an overview of the  
5 Ministry's case at this point and they do not consider  
6 the agenda filed during the preliminary to fulfill the  
7 role of providing them with that overview.

8 And what I would like to explore is what  
9 alternative is there to them having everything in its  
10 entirety, a full witness statement with all of the  
11 supporting documents attached thereto and the very  
12 sketchy overview that they were provided in the  
13 preliminary proceedings. And there must be some kind  
14 of compromise, I would suggest, in there where they  
15 could be provided with a much more detailed indication  
16 of what each panel is going to deal with.

17 MS. MURPHY: Can I deal with that this  
18 way then for the time being, Mr. Chairman, because  
19 before I embarked on considering that I would like to  
20 consider the details and consult with my colleagues -  
21 all of my colleagues - because, first of all, I  
22 seriously question whether part of the information is  
23 really what they want and whether all of the  
24 information is really what they want. That is one  
25 thing I would like to explore with them.



1                   THE CHAIRMAN: If you are ever going to  
2                   be able to seriously discuss with them some kind of  
3                   scoping, and I am not talking about scoping at the end  
4                   of the case after you have put in all your evidence  
5                   unscoped, but as you are putting it in, the parties are  
6                   going to have to know what areas they are either not  
7                   interested in or are not in contention and, therefore,  
8                   may be properly left out of being presented to the  
9                   Board.

10                  MS. MURPHY: Oh, I understand that, Mr.  
11                  Chairman.

12                  THE CHAIRMAN: I am not sure that they  
13                  feel that they are in a position to enter meaningfully  
14                  along that kind of exercise without knowing what you  
15                  are going to present.

16                  MS. MURPHY: I understand that, Mr.  
17                  Chairman. My point is simply this: That the proposal  
18                  would have in their hands all of the material before  
19                  recommencing on February 1st and I am not certain -  
20                  and, as I say, I would like to take the opportunity to  
21                  explore that with my friends - I am not certain that  
22                  some intermediate level of information, first of all,  
23                  would meet their concerns.

24                  Secondly, I am -- and as a practical  
25                  matter, I am concerned that adding a responsibility to

1       turn out some other level of information when we are at  
2       the same time trying to turn out detailed information,  
3       may be difficult for us.

4                   And, finally, just one last thing. I  
5       would also want to discuss with my colleagues and my  
6       client, if we were going to consider suggesting that  
7       kind of procedure, we would have to have a fairly clear  
8       idea what level of detail we were talking about, what  
9       kind of documentation.

10                   So, with your indulgence, I would prefer  
11       to confer with some people about that before making  
12       further submissions.

13                   THE CHAIRMAN: All right. Let me just  
14       ask you one more question. If you are not able to  
15       produce the documentation that I am suggesting, this  
16       intermediate level of documentation before you get to  
17       the actual final statements in their entirety, is it  
18       possible for the Ministry to sit down with the major  
19       parties, the parties participating on a full-time  
20       basis, and verbally indicate to them what each panel is  
21       going to deal with in terms of issues, so that they  
22       have an idea of what issues and the manner in which the  
23       Ministry is going to deal with them and, therefore,  
24       might be able to consider whether or not they have any  
25       particular interest in those matters.

1                   And if not, then perhaps those matters do  
2 not have to be presented to the Board in the normal  
3 way.

4                   MS. MURPHY: Well, again, that is  
5 something that I would discuss with them and ask if  
6 that is what they wanted. At the same time I would  
7 have to point out, Mr. Chairman, we have been available  
8 to do that all along and have done it. At any time  
9 anybody has asked us, we have given them whatever  
10 information we could, but certainly again that is  
11 another matter that I would suggest we have a  
12 discussion about.

13                  THE CHAIRMAN: Well, I was not suggesting  
14 it necessarily upon request as opposed to a--

15                  MS. MURPHY: A formal...

16                  THE CHAIRMAN: --a formal procedural type  
17 of provision that said the parties shall get together  
18 to carry out this exercise.

19                  MS. MURPHY: Would there be anything -- I  
20 mean, again, this is something sort of new to me, would  
21 there be anything in that that would require the other  
22 parties to come to that meeting with their verbal terms  
23 and conditions, suggestions.

24                  THE CHAIRMAN: Well, it is very hard for  
25 them to have terms and conditions if they do not know

1        what they are going to be facing. I mean, I think the  
2        first stage of this thing is for the parties that have  
3        to respond to the Ministry's case to understand what  
4        the Ministry is going to be presenting in these panels.

5                    See that is part of the problem. And  
6        what we are trying to look for at some stage - and, of  
7        course, we want to hear from all the parties - is:  
8        When you get to February after you do as you are  
9        proposing, after the adjournment has been granted, we  
10       are back to a situation where the parties say: And we  
11       will try and attempt to scope, and if it works out that  
12       you have not been successful - as you have not been  
13       successful in any of your attempts to date with some of  
14       the other procedural -- not everything, but some of the  
15       other procedural things that we have talked about  
16       earlier - the Board is left in the position of saying:  
17       Well, that time while we were down has been lost, all  
18       of the issues that you otherwise would have addressed,  
19       had we not adjourned are going to be addressed and  
20       nobody is agreeable to any issues being placed in the  
21       category of being non-contentious and, therefore, not  
22       necessary to be put before the Board in the normal way.

23                   And it is sort of a blind faith leap  
24        again by the Board to say: Yes, we will consider  
25        granting the adjournment for these purposes; yes, we



1       have the representations of the parties that they will  
2       use their best efforts to actually scope some of the  
3       issues and then find out at the end of the day that  
4       that, is not possible. And it is in this area that the  
5       Board I think is looking to find some solution, if one  
6       can be arrived at.

7                   MS. MURPHY: Well, you will appreciate of  
8       course, I mean that is our concern as well. As you  
9       will recall, Mr. Chairman, we did bring forward an  
10      attempt to get agreement on a statement of facts, for  
11      example, and I just want to emphasize that we have made  
12      our best efforts and we continuing to do so.

13                  THE CHAIRMAN: I am not suggesting for  
14      the moment that the parties have not made their best  
15      efforts, I am more concerned about the result of those  
16      best efforts which to date has been zero.

17                  MS. MURPHY: Well, and again to put in  
18      the human element, sir, everyone one is concerned about  
19      the results. Mr. Freidin is afraid he isn't going to  
20      see his daughter grow up.

21                  If I might continue just to finish. The  
22      other matter that I had suggested as being tied  
23      together with the formal submission of all parties of  
24      their proposed terms and conditions, this is another  
25      matter that I would suggest goes very much to natural

1 justice and procedural fairness.

2 We would suggest - and this is really .  
3 directed primarily at the parties who have counsel and  
4 who have people who are able to help them organize and  
5 who understand these proceedings - but we would suggest  
6 that at the same time any person who intends in their  
7 case to make specific allegations of fact which are  
8 intended to show inappropriate and environmentally  
9 unsound timber management practices by any person would  
10 give adequate notice of that intention and of the facts  
11 upon which they will -- and rely was the last word that  
12 sort of escaped that page.

13 Oh, you have it. Maybe it was just my  
14 photocopy.

15 The idea there is that those persons who,  
16 at that point in time, are intending in their case to  
17 call evidence of specific situations, should be  
18 required to give notice to those persons about whom  
19 they are going to make those allegations so that those  
20 persons can deal with those issues in their own case  
21 rather than having to deal with those issues in a sense  
22 of having been taken by surprise and again perhaps  
23 lengthening matters by having to reply to them later.

24 THE CHAIRMAN: Well, that of course was  
25 the purpose of the other parties, at least the

1 full-time parties being required to file witness  
2 statements of their own.

3 MS. MURPHY: Yes, that's right.

4 THE CHAIRMAN: So that the Ministry would  
5 he have notice of what their case is and could respond  
6 adequately to those issues.

7 MS. MURPHY: Yes. And I think -- fair  
8 enough, sir, but I think the thing that is important  
9 here is to understand that this is here not only to  
10 deal with allegations of fact that may deal with people  
11 who are in the Ministry but, of course, allegations of  
12 fact that -- about people who are the clients of the  
13 Ontario Forest Industry Association representatives.

14 And I will leave my friend to speak to  
15 that matter, but the point is: As I understand it, one  
16 of his concerns is that he will commence his case, put  
17 in his case and complete it without having notice of  
18 specific facts that may be led in cases following his  
19 and, as I understand it, his concern is that if and to  
20 the extent that he is taken by surprise, he would not  
21 have been able to deal with it in his case, he may then  
22 have to deal with it at some later time and it is an  
23 attempt to bring in some efficiency as, again -- again,  
24 Mr. Chairman, that is something that I think my friend  
25 would be better to deal with.

1                   THE CHAIRMAN: Why cannot Mr. Cosman on  
2                   behalf of his clients cross-examine in the normal way  
3                   should those things be raised or if necessary, we would  
4                   not want to get into this unless we really had to, if  
5                   there was some major unfairness, deal with it in a form  
6                   of reply with the Board's indulgence?

7                   MS. MURPHY: Probably both of those  
8                   things are open to him. At the same time - and I think  
9                   these are some matters that we have had discussions  
10                  with other counsel about and they are of varying  
11                  views - but I think it is probably a fairly basically  
12                  accepted principle that where counsel are involved and  
13                  they understand that they are intending to make such  
14                  allegations about certain events that it is only fair  
15                  to advise the person well in advance so that they can  
16                  have an opportunity in their own case, if necessary, or  
17                  in cross-examination to reply.

18                  You will appreciate that we are dealing  
19                  with a large province and a large potential area and a  
20                  large number of people and the idea is that the people  
21                  who are represented and who have counsel and understand  
22                  these principles should be encouraged to advise, as  
23                  early as possible, as would be expected in my  
24                  respective view, Mr. Chairman.

25                  THE CHAIRMAN: Very well.



1 MS. MURPHY: Finally, and if you just go  
2 over the page I have just added an addition. All  
3 full-time parties would be required to file their  
4 witness statements within a specified period and at  
5 this stage, and until you have had an opportunity to  
6 hear other people, we haven't put in a proposed  
7 specified period. At this stage, however, we would  
8 suggest that at the very least, if this proposal is  
9 followed, that would be prior to the presentation of  
10 their case.

11 Now, I understand that a number of my  
12 friends here would have discussions with us, have some  
13 submissions to make about the proposal.

14 So unless you have any other questions at  
15 this time, I suggest that they do that.

16 MR. COSMAN: Mr. Chairman, just with  
17 respect to that suggestion, rather than do it in part,  
18 I would prefer to make my submission on my motion and  
19 in the context of that I will be addressing the  
20 proposal. And I think if the other parties did that we  
21 wouldn't all have to do it twice.

22 THE CHAIRMAN: Very well. That probably  
23 makes some sense.

24 Mr. Castrilli -- are you finished Ms.  
25 Murphy?

1 MS. MURPHY: Well, I just have a note  
2 here and it was just to point out that given this  
3 proposal and looking at putting in Panel 7 during  
4 November, looking at the December break that would have  
5 been expected in any event, that if this proposal is  
6 accepted the amount of time difference - and, of  
7 course, we don't know what other days might have been  
8 lost in there anyway - is much less than the number of  
9 months that you were concerned about. It probably gets  
10 down to about six weeks. At the same time we would  
11 also repeat that parties with a number of different  
12 interests have reviewed this proposal and have had  
13 general, sort of, have been generally pleased with it.

14 And, again, as I say, I think it is  
15 really...

16 THE CHAIRMAN: Mr. Hunter is about to  
17 leap off his chair. Perhaps we will let the parties  
18 speak themselves on that issue, Ms. Murphy, as to  
19 agreement.

20 MR. CASTRILLI: Mr. Chairman, I was going  
21 to suggest as I had at the outset that all counsel  
22 speak to the areas where I believe there is common  
23 agreement before we deal with a matter where I  
24 understand there is substantial disagreement and, in  
25 that light, I would like to suggest that we proceed in

1       that manner, because I think it will actually shorten  
2       up the day's proceedings.

3               THE CHAIRMAN: Well, I guess we will find  
4       out whether there is common agreement when we get to  
5       the individual parties, but you put forward the areas  
6       that you think there is common agreement.

7               MR. CASTRILLI: All right. Thank you.

8               Mr. Chairman, if I could again ask you to  
9       then turn to the Ministry's proposal of August 26th,  
10      beginning with page 2.

11              Firstly, you will see on that page and on  
12      the following page 3, down to about the middle, the  
13      Ministry's proposal for dates of filing subsequent  
14      witness statements and I can advise on behalf of my  
15      clients, Forests for Tomorrow, that we are prepared to  
16      accept the Ministry's proposed schedule of filings as  
17      set out at the bottom of page 2:

18              For example, by the end of the month of  
19      September, Panels 8, 9 and 10 and at the same time  
20      identifying the appropriate 30 to 40 day-periods for  
21      receipt of interrogatories.

22              Secondly, at the end of December - which  
23      is over onto page 3 - the filing of witness statements  
24      11, 12, 13 and 14 again with proposed dates of  
25      interrogatories.

1                   And, thirdly, by the end of January, the  
2                   filing of Panels 15, 16, and 17. We are prepared to  
3                   accept that and I would only add, Mr. Chairman, that I  
4                   would encourage the Ministry, if they can, to file more  
5                   sooner. In other words, they ought not to feel they  
6                   are constrained by those dates. If in fact they can  
7                   produce the material sooner, I think that would be  
8                   quite helpful to all parties concerned and the Board.

9                   Secondly, my clients are prepared and  
10                  think it is also a good idea for the Ministry of  
11                  Natural Resources to file a proposed set of terms and  
12                  conditions of approval prior to the end of its case and  
13                  I agree with the Ministry that it should not be, or a  
14                  date should not be fixed today. Again, I would  
15                  encourage them to do so before the end of Panel 15, if  
16                  they can possibly do that, taking into account the  
17                  Chairman's comments -- your comments with respect to,  
18                  if scoping is going to occur, it can be sped up if we  
19                  have something to respond to sooner than Panel 15, but  
20                  in principle we support the Ministry's proposal for a  
21                  set of terms and conditions at some point before the  
22                  end of their case.

23                  I understand they are focusing on the end  
24                  of Panel 15's evidence, but I would encourage them to  
25                  attempt to file their proposed terms and conditions



1 before then because I think it will in fact contribute  
2 to scoping of the issues.

3 Thirdly, my clients Forests for Tomorrow  
4 are themselves prepared to file a set of terms and  
5 conditions on a without prejudice basis some time after  
6 the Ministry files its set of terms and conditions  
7 and, again, I would suggest that no date should be  
8 fixed for this at this time. It will really depend  
9 upon when the Ministry files its material and what  
10 other things are going on during the course of the  
11 hearing at the time of the filing.

12 I would, however, indicate Mr. Chairman,  
13 that there is one proviso with respect to our prepared  
14 evidence necessary to file a set of terms and  
15 conditions even on a without prejudice basis and that  
16 is that we would like, in addition to the witness  
17 statements that would have been available to us at that  
18 point in time, we would also like responses to all  
19 interrogatories, up to that time, responses and full  
20 compliance with all undertakings that are outstanding  
21 up to that time.

22 And, thirdly, we would expect full  
23 compliance with the Board's Order of May 13, 1988  
24 respecting information from records regarding  
25 environmental impacts from timber management practices.

1 As you will recall, Mr. Chairman, that was an order of  
2 the Board that was raised by -- it was dealt with as a  
3 result of a motion I brought at the end of the first  
4 week of the hearing. We have had not any further  
5 contact from the Ministry with respect to that and I  
6 believe, as I recall the Board's order, it really was  
7 going to be a two-stage exercise; firstly, the Ministry  
8 was going to produce a list of categories by which it  
9 actually keeps that information; and, secondly,  
10 after -- and they would bring that to the Board for  
11 discussion to indicate exactly what was involved in  
12 producing that information; and then, secondly, there  
13 was going to be a further order from the Board dealing  
14 with what in fact should be produced.

15 And all of that, Mr. Chairman, as you  
16 will recall, was to happen prior to Panel 10, so that  
17 we would in fact have the information not simply the  
18 list. So we are prepared to produce a set of terms and  
19 conditions as set out in the Ministry's proposal of  
20 August 26th with those additional provisos that I have  
21 just outlined.

22 And let me just say, Mr. Chairman, that I  
23 do believe that the Ministry's proposal to that point  
24 is one that is seriously worthy of your consideration.  
25 I think it will in fact increase understanding of the

1 issues, it will in fact contribute to a potential  
2 reduction in hearing length, and I think it will in  
3 fact remove elements of what otherwise might be  
4 unfairness in the proceedings as we have experienced  
5 them to date.

6 So to that point in the Ministry's  
7 proposal I think you will find there is -- I won't  
8 speak for all counsel, but I think you will find that  
9 there is a reasonable degree of support and I certainly  
10 will not purport to speak for all counsel when I say  
11 that, but certainly from the perspective of my clients  
12 to that stage in the Ministry's proposal there is  
13 support from my clients.

14 Now, beyond that we get into areas where  
15 my clients do not support the Ministry proposal and I  
16 am in your hands as to whether you would like to hear  
17 from me just in terms of our not accepting those parts  
18 of the proposal without actually hearing the argument  
19 with respect to them, because I think properly speaking  
20 they should be addressed by Mr. Cosman when he actually  
21 puts forward his motion.

22 But I am in your hands with respect to  
23 how you would like to proceed.

24 THE CHAIRMAN: I think we should probably  
25 proceed more expeditiously by finishing, to the extent

1 we can, with each person's presentation including the  
2 areas you do not agree rather than having to come back  
3 to each party the second time.

4 MR. CASTRILLI: Mr. Chairman, just in  
5 regard to that then, I would like to hear all of Mr.  
6 Cosman's comments with respect to the arguments in  
7 support of his motion before I deal directly with his  
8 motion.

9 I can simply indicate at this stage and I  
10 would prefer to do it in this manner, what we are not  
11 prepared to accept in the Ministry's proposal and then  
12 I think, in all fairness to Mr. Cosman, and once we  
13 have dealt with the Ministry's proposal and where there  
14 is a common area of agreement, I think in fairness to  
15 Mr. Cosman, it would be appropriate for you to hear  
16 from him and then have response to his motion.

17 So if that is acceptable to you, I would  
18 like to proceed in that manner.

19 THE CHAIRMAN: All right. So you will  
20 proceed now with that and then I take it we will go to  
21 Mr. Cosman?

22 MR. CASTRILLI: Well, I think perhaps you  
23 might also wish to hear from other parties who are in  
24 support of what I have already indicated we are in  
25 support of, because I think you will find there is



1 other support in the room.

2 THE CHAIRMAN: But Mr. Cosman may be in  
3 support as well.

4 MR. CASTRILLI: Well, he may well be in  
5 support as well of those elements I have already  
6 outlined and I think he should indicate that on the  
7 record, but in fairness to him, and really in fairness  
8 to anyone trying to follow the transcripts, it would be  
9 appropriate to deal with his motion where I believe  
10 there is substantial disagreement separately.

11 MR. COSMAN: Mr. Chairman, if I can be of  
12 assistance. I think your original direction would be  
13 still be very helpful to all of us.

14 I will address the matter with which I am  
15 in agreement and that with which I am not in agreement  
16 in the course of my submissions. You will hear  
17 everybody and it won't be necessary for us to jump up  
18 and down responding to bits and parts as we go along.

19 So if Mr. Castrilli wishes to hear mine  
20 before he proceeds, I am certainly prepared to do that.

21 MR. CASTRILLI: Okay, that is fine.

22 Let me just indicate then in two seconds  
23 what in the Ministry's proposal we are not prepared to  
24 support and then I certainly would be prepared to defer  
25 to Mr. Cosman or to accept what other way you wish to

1 proceed in dealing with the remainder of the matters.

2 If I could then ask you to turn to the  
3 bottom of page 3 of the Ministry's proposal. It is the  
4 last paragraph on the page where the Ministry sets out:

5 "At the same time any person who intends  
6 to make specific allegations of fact  
7 which are intended to show inappropriate  
8 and environmentally unsound timber  
9 management practices by any person would  
10 give adequate notice of that intention  
11 and the facts upon which they rely."

12 I can simply advise -- why don't I go  
13 over to the next page and the top of page 4:

14 "In addition, all full-time parties would  
15 be required to file their witness  
16 statements within a specified period of  
17 time."

18 I wasn't entirely certain what the  
19 specified period of time was, was it meant to be prior  
20 to the commencement of the industry's case? It is not  
21 stated or exactly when it was meant to be. I thought I  
22 heard her say at the commencement of each party's case,  
23 but I wasn't certain whether that was the full intent  
24 of that paragraph.

25 THE CHAIRMAN: I believe she said the

1       latter.

2                   MR. CASTRILLI:   Okay, that's fine.

3                   Well then, in relation to the bottom of  
4       page 3, I can advise that my clients are not prepared  
5       to give notice in advance of the commencement of the  
6       industry's case on the basis set out in the motion and  
7       we would have extreme difficulty in producing all of  
8       our witness statements either in advance of the  
9       commencement of the industry's case which is outlined  
10      in their motion or otherwise.

11                  We believe that the Procedural Directive  
12      that is currently in effect properly deals with those  
13      two matters.  We are respondents in this case and we  
14      are responding, by definition, to a case we have yet to  
15      hear and, indeed, the nature of our evidence is in the  
16      main rebuttal evidence and you can't rebut -- you  
17      certainly can't produce evidence in response to  
18      something you have not yet heard.

19                  So that with respect to those two  
20      portions of the Ministry's proposal, we are not in  
21      support of them and those would be, for reference sake,  
22      the bottom of page 3 and the top of page 4.

23                  And I think, Mr. Chairman, that that  
24      would be the extent of my comments on the Ministry's  
25      proposal.

1                   THE CHAIRMAN: Mr. Castrilli, if your  
2 clients receive more adequate information as to what  
3 issues will be addressed by future panels to be called  
4 by the Ministry, even in advance of receiving the full  
5 witness statement, would your clients and yourself feel  
6 there would be any possibility of looking at those  
7 issues with a view towards deciding whether or not they  
8 were of concern to you?

9                   MR. CASTRILLI: No, Mr. Chairman. I  
10 think that almost takes me into the argument I had  
11 prepared in support of my motion had we had nothing  
12 further from the Ministry. I think the answer to your  
13 question is really predicated upon exactly how the  
14 Ministry's environmental assessment has developed in  
15 this hearing and rather than deal with that -- I don't  
16 wish to not respond to your question, but I think it  
17 becomes particularly relevant when we compare my motion  
18 to the industry's motion and the different basis upon  
19 which they both proceed.

20                  THE CHAIRMAN: Okay.

21                  MR. CASTRILLI: So that I think, in  
22 fairness, it might be helpful to wait until you hear  
23 from me when I respond to my friend's arguments in  
24 support of his motion to see precisely why there is a  
25 difference vis-a-vis his position and mine. It is



1 based on the statute.

2 THE CHAIRMAN: Very well.

3 MR. CASTRILLI: Thank you.

4 THE CHAIRMAN: Mr. Cosman?

5 MR. COSMAN: Mr. Chairman, members of the  
6 Board, the order that I am seeking by my motion will, I  
7 submit, meet the criteria that you have suggested at  
8 the outset.

9 Firstly, it will meet the rules of  
10 procedural fairness and natural justice that will  
11 ensure that this hearing won't go off the rails legally  
12 and end up in the divisional court on this matter and,  
13 secondly, it will shorten the hearing.

14 I will explain in the body of my remarks  
15 why the Ministry of Natural Resources' proposal,  
16 insofar as it affects my client, is helpful but it  
17 doesn't go far enough to satisfy the rules of  
18 procedural fairness that you must follow at this  
19 particular hearing.

20 As far as Mr. Castrilli's motion goes, I  
21 will reserve my remarks until I hear him on that, but  
22 as far as the relief that he is seeking insofar as the  
23 Ministry's case is concerned, I can say that I do not  
24 generally oppose what he is seeking; that is, I do not  
25 oppose that the Ministry deliver the balance of its

1 witness statements before we proceed on February 1st  
2 after the completion of Panel 7. In fact, I don't  
3 think this will result in much of a time loss for the  
4 Board; we still have Panel 6 and 7; we still have a  
5 site visit in November; I think I could easily see -  
6 October being off - I can easily see the break taking  
7 place around the end of December and with Christmas in  
8 December, you are not talking about a lengthy  
9 adjournment in any event.

10 So, in that respect, I would support my  
11 friend's position and I believe the Ministry of Natural  
12 Resources has already indicated that they are prepared  
13 to accept that, that they present the balance of their  
14 witness statements before we proceed on February 1st.

15 The real problem facing me - and I  
16 respectfully suggest the Board - is not the overview of  
17 the Ministry's case, it is a complete lack of  
18 definition of the objection to that case as there is no  
19 clear statement of issue with that which is proposed in  
20 the Class EA Document.

21 This is one of the largest hearings in  
22 Ontario history, affecting an entire industry and how  
23 it operates in almost every aspect. It covers an  
24 incredibly vast part of the province with tremendous  
25 issues and tremendous amounts at stake, but there is no

1 definition of the opposition to that proposal other  
2 than some bald generalized allegations in the opening  
3 statements of some of the parties, and I stress some of  
4 the parties, because some of the parties other than  
5 saying that they are opposed haven't said why or in  
6 what way. We just don't know, and this Board does not  
7 know what is it with respect to the Class EA  
8 undertaking that is up for decision. What is objected  
9 to?

10 And when you look at the opening  
11 statement of the parties, those parties who did  
12 elaborate - Mr. Castrilli did so to a certain extent -  
13 it was in such a bald general way that it isn't  
14 helpful. And just to give you an example of that, I  
15 refer to page 230 of the opening statement. I will  
16 just read a short remark. He says:

17 "On this issue, as on many others, we  
18 consider that the evidence will be most  
19 helpful to the Board in evaluating the  
20 suitability of the timber management plan  
21 outlined by the Ministry of Natural  
22 Resources and because there will, in  
23 fact, be evidence from site-specific  
24 examples."

25 Mr. Chairman, I am going to be going into

1 my case acting on behalf of the companies that operate  
2 on the FMAs with no knowledge of what those  
3 site-specific examples are. I have no idea what Mr.  
4 Castrilli is opposing.

5 I agree with you, Mr. Chairman, that you  
6 have attempted, and I suggest valiantly, to put the  
7 parties, to knock a few heads together, to get the  
8 parties together to identify issues, to scope the  
9 hearing, to hopefully shorten it in the public interest  
10 and, as you have indicated, so far these results have  
11 been unsuccessful.

12 The difficulty in part, because of a  
13 hearing of this length and size, is that unlike smaller  
14 hearings in terms of scope of issue or time or space,  
15 what is there to focus on? We could be here for years  
16 and years if we don't have a better idea of what the  
17 opposition is to this proposal.

18 It is incredibly frustrating to my  
19 clients who are going to be left after we all pack our  
20 bags at the end of this hearing and they are going to  
21 be left to cut the timber, plant the trees to in effect  
22 be the timber managers. These are the people who work  
23 in the north and live in northern communities, and at  
24 this particular time and before our case, if we proceed  
25 as scheduled, these people and these clients will not



1 know what the case is that has to be met.

2 I am going to make four submissions based  
3 on a number of propositions. The first of these is  
4 that, of course, as this Board knows, that it has a  
5 right to dictate its own procedures and processes, so  
6 long as the rules of natural justice are not offended.  
7 So there is that overriding legal requirement that the  
8 rules of natural justice not be offended in the  
9 procedures that the Board decides to adopt.

10 Point two. My clients have a real  
11 proprietary interest which will be affected by the  
12 outcome of this hearing, by the decision of this Board.  
13 My client has, for example, contract rights under the  
14 forest management agreements that are going to be  
15 affected.

16 Thirdly, the Board has recognized the  
17 status of our clients and has afforded our clients full  
18 party status before it.

19 And, fourthly - and this will be the  
20 basis of some of my subsequent argument - that the law  
21 as stated in the cases and as outlined in the legal  
22 text - and I am going to refer to parts of them - makes  
23 it very clear that where the rights of parties may be  
24 adversely affected by evidence at a hearing, there is,  
25 one, a right to have notice of such adverse allegations

1 in advance and in sufficiently reasonable time in order  
2 that a case might be prepared to meet it; and,  
3 secondly, there has to be the right to respond to and  
4 rebut those allegations.

5 So there has to be a right to have notice  
6 of such adverse allegations and there has to be the  
7 right to respond to and rebut them, and such rights are  
8 not limited to the party which has carriage of the  
9 proceedings.

10 THE CHAIRMAN: Sorry, what was that last  
11 one?

12 MR. COSMAN: That those rights are not  
13 limited to the party which has carriage of the  
14 proceedings, those rights are not merely the right of  
15 the MNR, it is the right of my clients, as it is the  
16 right of the other parties.

17 In fact, this right to advance prior  
18 notice of the case that a party has to meet is  
19 fundamental. Mr. Justice Reid in his text at page 223  
20 says:

21 "Natural justice does not always require  
22 full disclosure of the evidence against a  
23 party, but usually requires that material  
24 evidence be disclosed."

25 The learned authors of DeSmith on

1 administrative law, and this is Professor Evans of  
2 Osgoode's fourth version of DeSmith, at page 196 says  
3 as follows:

4 "Natural justice generally requires that  
5 persons liable to be directly affected by  
6 proposed administrative acts, decisions  
7 or proceedings be given adequate notice  
8 of what is proposed so that they may be  
9 in a position to make representations, to  
10 appear and, thirdly, to effectively  
11 prepare their own case and to answer the  
12 case, if any, that they have to meet."  
13 He further says at page 196:

14 "Where one asks who is impliedly entitled  
15 to prior notice, one is asking in  
16 substance what kind of interests are  
17 entitled to the protection of the rules  
18 of natural justice and it is not easy to  
19 answer such a question except at a high  
20 level of generality. For instance, in  
21 some, but not all situations, notices of  
22 a licensing application should be given  
23 to competitors who economic interests are  
24 liable to be jeopardized if the  
25 application is granted."

1                   And authorities cited for that. Here we  
2                   are not talking about competitors, we are talking about  
3                   the parties whose very economic life is going to be  
4                   affected by the decisions that this Board has to make.

5                   Page 197:

6                   "If, as usual, the reason for imposing an  
7                   obligation to give prior notice is to  
8                   afford those affected an opportunity to  
9                   make representations, the notice must be  
10                  served in sufficient time to enable those  
11                  representations to be made effectively."

12                  Page 199:

13                  "If anybody is entitled to be heard, the  
14                  persons so entitled..."

15                  And you have already indicated that we  
16                  are entitled to be heard:

17                  "...the persons so entitled will be those  
18                  immediately affected by what is proposed  
19                  and those upon whom personal service of  
20                  prior notice is required." And it is  
21                  these parties that the principle of audi  
22                  alteram partem (hear the other side) is  
23                  granted."

24                  And on the section at page 203, duty of  
25                  adequate disclosure, this is what DeSmith says:



1 "If prejudicial allegations are to be  
2 made against him, the party must  
3 normally, as we have seen, be given  
4 particulars of them before the hearing so  
5 that he can prepare his answers. In  
6 order to protect his interests, he must  
7 also be able to controvert, correct or  
8 comment on other evidence or information  
9 that may be relevant to the decision."

10 So it is clear, Mr. Chairman, in law that  
11 the parties are entitled to advance notice of the  
12 allegations to be made and to date, at this hearing, we  
13 haven't the foggiest as to what the allegations are  
14 going to be made in opposition to the Class EA  
15 proposal.

16 Now, let us come to the relief that I am  
17 seeking. What I am seeking is the exchange of witness  
18 statements after the MNR's case, before the OFIA/OLMA  
19 presents its case because, like the other parties, the  
20 OFIA/OLMA is a respondent, and what I am seeking is an  
21 exchange of those witness statements before we even  
22 start our case.

23 Now, the rules and principles in law that  
24 we have just discussed, the basic fundamental rules of  
25 administrative law have been considered in both

1 administrative law settings and in judicial settings  
2 and other tribunals and other courts have done that  
3 very thing to give effect to those principles.

4 For example, the Federal Court. The  
5 Federal Court requires the exchange of expert reports  
6 in advance of trial. Why? Lots of reasons. Hopefully  
7 the parties coming into a case know what their position  
8 is and in advance of the trial, for the purpose of  
9 scoping the issues, defining the issues and shortening  
10 the hearing, there is -- plus giving the parties the  
11 opportunity to consider and rebut the case of the other  
12 side, those expert reports are exchanged. We are  
13 asking for something similar.

14 In Ontario, in terms of the Ontario  
15 courts, after some consideration and a wide study of  
16 the rules under the late Walter B. Williston, the Rules  
17 of the Supreme Court were amended to provide in Rule  
18 52031:

19 "A party who intends to call an expert  
20 witness at trial shall not, less than 10  
21 days before the commencement of trial,  
22 serve the other parties with the report."

23 Now, I am not suggesting that you are  
24 obliged to follow court rules, that's not the point.  
25 The point is that the principle of disclosure, so that

1 parties will know what the case they have to meet is,  
2 has been recognized in various judicial sets of rules.

3 I have been involved in complex technical  
4 cases on an international level where in advance of the  
5 case it is standard practice that the parties exchange  
6 their expert reports and for the very same reason. And  
7 it is the reason of procedural fairness and it is the  
8 second reason which goes to your initial comment, Mr.  
9 Chairman, it will shorten the hearing as well. Because  
10 if I don't know the case that I have to meet, if I  
11 don't know the issues I have to focus on, then I can  
12 tell you, if I have to try to anticipate and guess what  
13 it is going to be, my case is going to be as long as or  
14 longer than the MNR case.

15 There is so much at stake for my clients  
16 that if I don't know what it is that I have to address,  
17 I have to expect that I have to address just about  
18 everything that could possibly arise and, in this  
19 hearing, with the diverse issues that are buried in the  
20 cross-examinations, I just have to anticipate: Well, I  
21 better be prepared to address just about anything that  
22 could affect the way in which my clients operate.

23 For example, Mr. Campbell pursued a line  
24 of cross-examination on Tuesday of Panel 5 as to  
25 whether the government had efficiency inspectors in the

1 mills. Is that an issue? Is that something that I  
2 have to address? Perhaps I do.

3 Mr. Edwards in his cross-examination  
4 earlier asked about legal transfers of licence. I  
5 don't know if he is suggesting that this is taking  
6 place, I don't know if he is considering it to be an  
7 issue, but I can't let that kind of implied allegation  
8 stand, I have to address it. I have to be able to  
9 respond to it and I can't let -- and the way things are  
10 going, I am left at trying to guess, where I can - and  
11 sometimes it is hard - as to where cross-examination is  
12 going. And, surely, the right to advance prior notice  
13 of the case that I have to meet can't be and shouldn't  
14 be left to my ability to define what the issues are  
15 from the cross-examination of my friends.

16 If every aspect of industry performance  
17 is under scrutiny and is up for grabs without  
18 limitation as to scope or geography, then my panels of  
19 evidence will address these diverse and varied issues  
20 in the context of my case. You do not want that, I  
21 don't want it, the public surely doesn't want it, but  
22 it will have to be done unless the issues are defined.

23 Now, the Board's own rules recognize the  
24 importance of defining the issues. Rule 20 sub (1)  
25 provides for a preliminary hearing where there are



1 various purposes, one of those purposes is to define  
2 the issues in dispute. That, of course, has not been  
3 done and perhaps could not be done because until you --  
4 the way you define the issues is you know what the  
5 parties' various positions are, then you define the  
6 issues. We don't know what the positions of the  
7 parties are. I have no idea what Mr. Hunter is going  
8 to say, what his opposition is, all I know is that he  
9 is opposed.

10 In addition, the rules of the Board  
11 provide as well for the exchange of documents relevant  
12 to the issues. If the issues aren't defined, that  
13 becomes frustrated itself and, again, I am going to be  
14 going into my case with tremendous -- a tremendous lot  
15 at stake for my clients without knowing what it is I  
16 even have to ask for.

17 And then, again, the Board, I think quite  
18 wisely in its rules, has provided that the Board may --  
19 in Rule 351: That witness statements may be exchanged  
20 among the parties. The Board has the power to order  
21 that and when is up to the Board. All I am saying is:  
22 Please do it at a point in time that will enable my  
23 clients to effectively participate in this proceeding.  
24 All that I am asking is a matter of procedural fairness  
25 which, as I say will, I respectfully submit, shorten

1 the hearing.

2 Now, with respect to the Ministry  
3 proposal insofar as it affects my client, you have to  
4 turn to the paragraph at the bottom of page 3 and there  
5 the Ministry is suggesting - and, again, this is a  
6 proposal:

7 "That any person who intends to make  
8 specific allegations of fact which are  
9 intended to show inappropriate and  
10 environmentally unsound timber management  
11 practices by any person would give  
12 adequate notice of that intention and of  
13 the facts upon which they will..."

14 MS. MURPHY: Rely.

15 MR. COSMAN: Rely.

16 MS. MURPHY: Rely is missing.

17 MR. COSMAN: Oh, rely is missing. Okay.

18 And insofar as it goes, I think that is a  
19 very useful suggestion, but there are some problems  
20 with it. The problems are that it doesn't define what  
21 kind of notice should be given. What I am asking for  
22 is notice by way of witness statements, such as the  
23 courts and other tribunals have done, because it is not  
24 sufficient to say: We are against your harvesting  
25 practices, we are against clear cuts. Why? We are

1       against -- let's find out, because if I know what the  
2       reasons are then I can address them.

3                       So there is that problem. There is a  
4       second problem in that the language which may not  
5       necessarily be a problem, but it refers to specific  
6       allegations of fact. Well, clearly if one of my  
7       friends is going to suggest, as Mr. Castrilli has  
8       indicated in his opening he will, that company "x" did  
9       this, this is an example of something done improperly  
10      by company "x".

11                      MR. CASTRILLI: Mr. Chairman, I object to  
12      the suggestion I identified companies in the opening  
13      remarks and there are many ways to interpret the  
14      sentence my friend read into the record, and I reserve  
15      the right to respond.

16                      MR. COSMAN: Well, you have a right of  
17      reply, Mr. Castrilli.

18                      MR. CASTRILLI: That's fine. I just  
19      wanted to set the record straight.

20                      MR. COSMAN: Well, let's deal with --  
21      let me deal with...

22                      THE CHAIRMAN: All right, gentlemen,  
23      let's deal with the issues at hand and not get into  
24      disputes over what one said and what the other said at  
25      this point in time.

1                   MR. COSMAN: All right. But there is the  
2 very reason I have a concern, Mr. Chairman, because if  
3 Mr. Castrilli or any other party is going to say  
4 company "x" did this which is bad, of course -- and if  
5 I don't know that in advance of my case, I am in effect  
6 in a very difficult position.

7                   So, one, I want the right of course to  
8 know in advance if that kind of allegation is going to  
9 be made, but it is not enough just to define that to  
10 specific because what if Mr. Castrilli is going to say:  
11 Industry is doing something unsound for these reasons.  
12 If I don't know that in advance of my case, not the  
13 specific company allegation, but if he is saying that  
14 industry is doing something unsound for these reasons,  
15 I want to know what it is that he is going to say that  
16 is unsound so that I can call evidence on it when it is  
17 my turn, otherwise I am going to have to do two things:

18                   One, try to guess in advance of my case  
19 as to what he says industry is going to say is unsound,  
20 call evidence on everything and then ask for a right of  
21 reply when he calls evidence on something that I wasn't  
22 able to guess.

23                   So the exchange of the witness statements  
24 will address that issue because the experts on either  
25 side -- he will have my expert statements, I will have



1 his, as with the Federal Court, as with the Ontario  
2 Supreme Court, as with other tribunals. We can focus  
3 on where the experts disagree and that's where I will  
4 address my oral evidence.

5 Now -- so therefore my suggestion is I  
6 need to know both; I need to know both a specific  
7 allegation against the company so I can have an  
8 opportunity fairly to meet it, and I have to know  
9 whether there is going to be a general allegation made  
10 about a specific kind of practice so that I can call my  
11 case to meet it hopefully or rebut it, and I am saying  
12 that Mr. Castrilli and the other parties should have  
13 the same right, but they will, because they will have  
14 my case in advance of theirs and they will have the  
15 MNR's case as well.

16 Now, perhaps what we are -- whereas  
17 tribunals and courts order the exchange of witness  
18 reports and sometimes it is even done informally, such  
19 as before the Board -- Ontario Municipal Board, but  
20 where it is done it is often before the trial starts.  
21 I mean, we are agreeing that there should be a  
22 variation here, and that is that my friend should have  
23 the right to hear the MNR's case in whole before he  
24 does that. So there is not -- I mean, he is being  
25 given a right that most tribunals and courts do not

1       afford to parties in terms of the exchange of reports.

2               Now, what about the point he made that:

3       Look, I am just not going to be able to do this. Let's  
4       consider this. There is a question of timing. We are  
5       not talking about Mr. Castrilli or another party  
6       delivering a report next week, we are talking  
7       realistically, six to nine months from now.

8               Secondly, if one were to argue that:  
9       Well, something else might come up which requires a  
10      supplementary statement, that's fine. I would fully  
11      agree with the Board that a party with leave should  
12      have a right to file a supplementary statement or an  
13      addendum to a statement if something comes up in the  
14      course of the MNR's case or even in the course of my  
15      case before they put their own witnesses in the box.  
16      That's not a problem.

17              So, Mr. Chairman, in summary, I would  
18      respectfully submit that the relief that I am seeking  
19      will meet the requirements of the Board, will meet the  
20      requirements of procedural fairness, will shorten this  
21      hearing.

22              Those are my submissions, subject to any  
23      reply submissions I may have to the other parties  
24      arguments.

25              THE CHAIRMAN: Thank you, Mr. Cosman.

1                   Ladies and gentlemen, we have been going  
2                   for in excess of an hour and a half. I think we will  
3                   take a fifteen minute break at this time and proceed  
4                   on. At the rate it is going, and the number of parties  
5                   we have to deal with, I am not convinced a hundred per  
6                   cent that we are even going to complete it today.

7                   We will take an abbreviated lunch hour  
8                   and push on. If it looks like we are not too far away  
9                   from completing the submissions, maybe we will even  
10                  skip lunch. I do not know, we will see later in the  
11                  morning.

12                  We would like to finish off today, but  
13                  obviously a number of parties are prepared and want to  
14                  make submissions to the Board on these issues and we  
15                  will have to hear everybody. If necessary, we may just  
16                  have to continue it next week.

17                  We will be back in 15 minutes.

18                  ---Recess taken at 10:05 a.m.

19                  ---Upon resuming at 10:45 a.m.

20                  THE CHAIRMAN: Thank you, ladies and  
21                  gentlemen. Please be seated.

22                  Mr. Castrilli, are you going to respond  
23                  at this time to Mr. Cosman's submissions?

24                  MR. CASTRILLI: Yes. I presume that is  
25                  where we are.

1                   THE CHAIRMAN: All right. And then when  
2                   you are concluded, I think that we would like to have  
3                   the parties who, I understand, may have a problem  
4                   attending next week if this happens to spill over into  
5                   the early part of next week.

6                   We are hoping it does not, but I  
7                   understand, Mr. Hunter, you will have a problem  
8                   reattending on Tuesday next week?

9                   MR. HUNTER: That is correct, Mr.  
10                  Chairman. I have a trial which commences on Tuesday  
11                  morning and we are trying to arrange to hold the next  
12                  day open because we think we are going to require  
13                  another two hours on the Wednesday -- sorry, on the...

14                  MR. MANDER: Yes, that is right.

15                  MR. HUNTER: On the Wednesday, that is  
16                  right.

17                  THE CHAIRMAN: Well, I think what the  
18                  Board is suggesting is that perhaps after Mr. Castrilli  
19                  is through we might move to you to hear your  
20                  submissions on the two motions.

21                  MR. HUNTER: I see.

22                  THE CHAIRMAN: And then to the other  
23                  parties, I think there is two others that may have a  
24                  problem for next week, and then return to the parties  
25                  who will be here on a regular basis and could argue



1 next week, if necessary.

2 MR. HUNTER: I have been attempting to  
3 speak to other counsel to see if alternative scheduling  
4 can be worked in and perhaps we can.

5 Thank you, Mr. Chairman.

6 THE CHAIRMAN: Okay.

7 MR. CASTRILLI: Thank you, Mr. Chairman.

8 Just before I begin my response to the  
9 submissions of Mr. Cosman, I thought I would make it  
10 clear on the record if it wasn't during my opening  
11 comments that, in essence, we are prepared to withdraw  
12 our motion with respect to the matters we sought as  
13 outlined in our motion on pages 1 and 2 in substitute  
14 for the proposal of the Ministry as it responds to our  
15 motion. And, again, subject to the conditions that I  
16 outlined in addition that have not yet been spoken to  
17 by Ms. Murphy, but I understand she is prepared to  
18 support as well, just so that the Board is clear about  
19 that.

20 THE CHAIRMAN: So our ruling will, in  
21 effect, be in response to the Ministry's proposal?

22 MR. CASTRILLI: Yes, that's right.

23 THE CHAIRMAN: Which takes into account  
24 the concerns raised in your original motion?

25 MR. CASTRILLI: Yes, that's correct.

1                   THE CHAIRMAN: Very well. Do any of the  
2 other parties have any objection to the Board  
3 proceeding on that basis?

4                   (No response)

5                   Okay.

6                   MR. CASTRILLI: Mr. Chairman, the other  
7 preliminary matter I wanted to deal with which I will  
8 save for the end of my comments is, I have received a  
9 letter from Northwatch, one of the parties receiving  
10 full-time correspondence to these proceedings, and they  
11 would like at some point for me to read their  
12 submissions into the record, both in response to my  
13 motion and in response to the industry's motion.

14                   I understand at some point this morning  
15 copies will be available and I think I will simply wait  
16 until that is the case.

17                   THE CHAIRMAN: All right. We also have  
18 before us a letter from Mr. Williams on behalf of the  
19 Ontario Federation of Anglers & Hunters who, I believe,  
20 spoke to a party to read their submission into the  
21 record at some point.

22                   Is that you, Mr. Edwards?

23                   MR. EDWARDS: That is correct, Mr.  
24 Chairman. Mr. Williams called me and asked that I  
25 would either read it in or ask the Board to treat it as

1 read into the report at some time and I intended to  
2 raise that when I was on my feet today.

3 THE CHAIRMAN: Very well.

4 MR. CASTRILLI: Okay. Thank you, Mr.  
5 Chairman. And I should just simply note in dealing  
6 with Mr. Cosman's motion I will be dealing with the  
7 essence of the issues I raised in my motion because I  
8 believe they speak directly to how you and the panel in  
9 general should view Mr. Cosman's motion.

10 So, with your indulgence, I expect to be  
11 a considerable period of time, I would think about 40  
12 or 45 minutes. Thank you.

13 Now, Mr. Chairman, Mr. Cosman has  
14 outlined for you the relief he seeks and the grounds  
15 upon which he believes he is entitled to that relief,  
16 and I would like to deal with all of them together both  
17 the relief sought and the four grounds for the relief,  
18 and it is our overall submission that the order sought  
19 by OFIA most definitely should not be granted.

20 Now, I would like to, in commencing,  
21 refer the Board back to the submissions that were made  
22 by myself on behalf of Forests for Tomorrow on May 11th  
23 at the time of our opening statement as a means of, if  
24 you like, setting out the context for why we do not  
25 support the OFIA motion.

1                   Just to give you an example of some of  
2           the things we gave the Board and all the parties notice  
3           about at that time, we stated, for example, and the  
4           reference in the transcript is at page 227 and that is  
5           Volume II, May 11, 1988, lines, for example, 12 to 18.

6                   This is an example of the kind of notice  
7           we advised all parties of at that time, we stated that:

8                   "The MNR planning process fails to  
9           recognize and control the impacts of  
10          particular forestry practices on the  
11          environment including large area clear  
12          cutting and that this failure is  
13          leading in some areas to long-term  
14          decline in productivity of our forest  
15          lands with reduced or failed  
16          regeneration."

17                   Now, we had put quite a number of  
18          submissions on that point and other matters. Now, it  
19          seems to me that that is pretty fair notice of matters  
20          we will be dealing with in our evidence and, indeed,  
21          some of the evidence, cross-examination and exhibits to  
22          date have in fact dealt precisely with those issues in  
23          a generic way.

24                   And, as examples, I would refer the Board  
25          to, for example, Exhibit 157 which is the Cary article,



1 Exhibit 158 -- excuse me, 157 is the Proposed Policy on  
2 Clear Cuts and Exhibit 158 is the article by Mr. Cary  
3 dated 1976.. Exhibit 161 are excerpts from the  
4 Fahlgren Commission Report, all of which speak to that  
5 issue on at a generic level. In fact, Mr. Cary's  
6 exhibit speaks to that issue at a specific level.

7 It seems to me that on that basis I  
8 simply cannot comprehend Mr. Cosman's argument when he  
9 says that he has no knowledge, as he says in his  
10 motion, of what we will be dealing with generally. It  
11 seems to me that it is quite clear and contrary, in  
12 particular to paragraph (c) of the OFIA motion, that  
13 they know very well indeed now what they should be  
14 addressing in their evidence with respect to that  
15 particular point as an example.

16 Now, in essence, what the OFIA is seeking  
17 is further discovery of the parties in opposition.  
18 They want it through notice of specific allegations of  
19 environmental damage, as is suggested in the Ministry  
20 proposal, and then in the OFIA motion they want it by  
21 way of the filing of all our witness statements before  
22 the industry commences its case. And I took from Mr.  
23 Cosman's opening comments that he also wants a right of  
24 reply, although that is not in fact something he is  
25 asking for in his motion.

1                   It seems to me that in essence the OFIA  
2           is asking for our evidence before they start and I  
3           would compare that to the Ministry of Natural Resources  
4           asking for our evidence before it starts.

5                   Well, quite frankly, that is truly  
6           incomprehensible to me. We cannot file our witness  
7           statements before we see the industry's case because  
8           the nature of our case is rebuttal evidence, that is  
9           what it means to be a respondent, and that is true both  
10          with respect to the Ministry's application and the  
11          industry's support of the Ministry's application, as  
12          they indicated on their opening day statements as well.

13                   It seems to me that the OFIA and what it  
14          really wants is a general right of reply and, if it  
15          does want that, it should become the proponent. It  
16          obviously made a decision not to become the proponent  
17          and, unfortunately for my friend, Section 47 of the  
18          rules of this Board do not permit it to become a  
19          proponent in the sense of obtaining a full right of  
20          reply.

21                   Now, with respect to the specific -- the  
22          issue of specific allegations which Mr. Cosman referred  
23          you to on page 230 of some 5500 pages ago, I would  
24          note, of what was part of our opening statement, the  
25          statement reads:

1 "We consider that the evidence..."

2 And this is at page 230, lines 3 through

3 7:

4 "We consider that the evidence will be  
5 most helpful to the Board in evaluating  
6 the suitability of the timber management  
7 plan outlined by the Ministry of Natural  
8 Resources because there will in fact  
9 be evidence from site-specific examples."

10 That is a pretty general statement. I  
11 don't see how my friend necessarily draws the  
12 conclusion that we are going to be making allegations  
13 about particular companies on particular days.

14 I don't leave out the possibility that in  
15 fact as the evidence develops there will in fact be a  
16 basis for making such allegations, but certainly at the  
17 time that statement was made I think it is sufficiently  
18 general that it could also, for example, apply to  
19 simply what goes on on Crown management units where my  
20 friend's clients have absolutely no involvement.

21 Now, with respect to the issue of  
22 specific allegations that the Ministry may not be  
23 previously aware of prior to the time they start their  
24 case, let me say now so there is no misapprehension  
25 about my client's position that we would not oppose a

1 limited right of reply with respect to those matters  
2 and I would like to define what I mean by those  
3 matters.

4 If, for example, taking a reasonably  
5 blatant example, we are talking about company "x" on  
6 day "y" taking their bulldozer and running through a  
7 stream in complete contravention of either the Crown  
8 Timber Act or the Environmental Protection Act or the  
9 Ontario Water Resources Act or any other particular  
10 statutes that may apply, and we have not previously in  
11 any way made it clear that that is something we will be  
12 dealing with, I think that is the kind of instance that  
13 I think could justify a limited right of reply in  
14 relation to that type of matter.

15 I am going to be giving the Board an  
16 example in a moment of why I think that is the  
17 appropriate way to proceed and not the way my friend is  
18 suggesting by way of the relief he is seeking in his  
19 motion.

20 However, having said that, there are  
21 specific matters, very specific matters that are now on  
22 the record. I, again, use Exhibit 158 as an example,  
23 Mr. Cary's paper, where my friend clearly has notice  
24 that that type of issue at one particular management  
25 unit level is in fact a matter at issue. So he has his



1 notice.

2 Again, let me deal with the issue of  
3 general matters such as the example I gave in my  
4 opening statement that I read into the record from page  
5 227 of the evidence just a moment ago.

6 It is our position that the OFIA simply  
7 and clearly is not entitled to a general right of  
8 reply. They have notice of the general concerns  
9 expressed in documents such as the ones -- or exhibits  
10 such as the ones I outlined earlier, and it is my  
11 position and the position of my clients that it is  
12 incumbent upon them to deal with that as best they can  
13 in their case. It cannot be under any misapprehension  
14 about what the issues are with respect to that  
15 particular example.

16 Now, I would again, Mr. Chairman, refer  
17 you to Section 47 of the Board's Rules of Practice  
18 which make it quite clear that the regulations do not  
19 contemplate reply by any one other than the applicant.  
20 There is the opportunity for the Board to vary that in  
21 the absence of, but in the absence of any such  
22 direction there is no reply contemplated for a  
23 non-applicant, non-proponent and it is my position  
24 there is nothing extraordinary in this case that should  
25 permit the Board to vary that.

1                   THE CHAIRMAN: Well, it is a general  
2 principle that you cannot offer the right of reply to  
3 every single party, you have to stop the process  
4 somewhere otherwise it becomes self perpetuating.

5                   MR. CASTRILLI: That's right, Mr.  
6 Chairman. And I am suggesting a rationale basis upon  
7 which this Board can make a determination when it will  
8 wish to make an exception to the general proposition  
9 stated in the Rules in Section 47.

10                   So just to summarize on that point  
11 generally, we are not the proponent. My clients have  
12 been waiting a very long time to see the entirety of  
13 the Ministry of Natural Resources' case. Our evidence  
14 is in the main rebuttal evidence, we are responding, as  
15 the term suggests, to a case put forward by the  
16 Ministry of Natural Resources which is the only entity  
17 I am aware of seeking an approval in these proceedings  
18 and we are responding to the case of the OFIA which  
19 supports the Ministry's position.

20                   Mr. Chairman, I can't underline this too  
21 strongly. This case is about the Ministry of Natural  
22 Resources' management of Crown forests. That is why I,  
23 presume they are the proponent and that is why they  
24 have a general right of reply under Section 47 of the  
25 Board's Rules and not anyone else.

1                   Now, Mr. Chairman, I promised you earlier  
2           an enlightening example of what it is I am talking  
3           about and why I believe the example demonstrates the  
4           proper way to proceed and the proper way to deal with  
5           Mr. Cosman's motion. I would like to draw an analogy  
6           between this case, the Ministry of Natural Resources'  
7           Class Environmental Assessment hearing and the Royal  
8           Commission of Enquiry into Aviation Safety, also known  
9           as the Dubbin Commission for Mr. Justice Dubbin of the  
10          Supreme Court of Ontario who headed it, and that  
11          commission held hearings in 1979 and 1980 and Mr.  
12          Justice Dubbin produced a three-volume report in 1981.

13                   It is my submission that that enquiry  
14          provides a rationale basis for dealing with the  
15          industry's concern as expressed albeit between the  
16          lines in its motion without in fact granting the relief  
17          that the industry seeks in its motion. In that  
18          enquiry, the principal government agency involved was  
19          the Federal Ministry of Transport and it was its  
20          management in general with respect to aviation safety  
21          that was the subject matter of that enquiry. As such,  
22          at that hearing, the Department of Transport led  
23          evidence with respect to its management practices on  
24          that issue.

25                   So I think the first analogy that is

1 appropriate with respect to that case and this case is  
2 that in this case the Ministry of Natural Resources'  
3 management of the Crown forests of Ontario is what this  
4 hearing is about, and that is why the Ministry is  
5 leading evidence and I presume not anybody else with  
6 with respect to its application.

7 Now, I would like to draw some further  
8 analogies and parallels between the aviation safety  
9 enquiry and this one which I think will lead to the  
10 proposition I am suggesting.

11 Now, in that hearing, the enquiry on  
12 aviation safety, the evidence was divided up into  
13 various segments such as air worthiness, enforcement of  
14 regulations, air traffic control, air accident  
15 investigations, and a host of other issues, I won't go  
16 on with the list. So in a very real sense the Dubbin  
17 enquiry, and the issue in that enquiry was: How has or  
18 how did or how is the Department of Transport managing  
19 national air safety and what are the deficiencies, if  
20 any, in its practices and procedures. That is what was  
21 at issue in that enquiry. And, I would submit, Mr.  
22 Chairman, that is not unlike the situation before this  
23 tribunal with one exception, that in this case the  
24 Ministry of Natural Resources is seeking approval of  
25 its management system with respect to the undertaking



1 of timber management. In all other respects, I suggest  
2 the parallel is analogous.

3 Now, I would like to go on further with  
4 this analogy, if I can, without actually beating it to  
5 death. As you can imagine, in the air safety enquiry  
6 the various airline companies had an interest in that  
7 enquiry for a number of very specific reasons. For  
8 example, deficiencies in the Department of Transport's  
9 management with respect to air safety could in fact be  
10 revealed through allegations made with respect to  
11 particular airline companies or, indeed, even  
12 individuals as was in fact the case in that enquiry.

13 It was well understood by all parties  
14 involved in that enquiry that when and where specific  
15 allegations were made with respect to particular  
16 companies on particular dates regarding specific  
17 events, that reply evidence would be permitted by the  
18 companies limited - and I underscore limited - to  
19 responding to such particularized allegations,  
20 otherwise there, as here, the only reply contemplated  
21 and indeed permitted by Mr. Justice Dubbin was reply by  
22 the Department of Transport.

23 Now, Mr. Chairman, in my submission, the  
24 Ministry of Natural Resources as regulator and as  
25 policy maker setting out its structures of management

1 of the Ontario Crown forests with respect to the  
2 subject matter of this undertaking; that is, timber  
3 management operations, is precisely analogous to the  
4 Department of Transport in the air safety enquiry.

5 And I believe that it is in that context  
6 that the industry's motion should be viewed really, in  
7 effect, as a request for reply limited to specific  
8 allegations regarding particular companies, particular  
9 individuals on particular dates on specific events, and  
10 no further.

11 And that is why, Mr. Chairman, we would  
12 not oppose such a limited right of reply but would  
13 vigorously oppose a general right of reply with respect  
14 to practices which have been raised generally in the  
15 evidence already and I use again, for example, the  
16 issue of controlling clear cutting where we would not  
17 be prepared to accept industry essentially having a  
18 double right of reply to the Ministry of Natural  
19 Resources.

20 THE CHAIRMAN: And you are going one step  
21 further, as I understand it, that limited right of  
22 reply that you are supporting would apply only to  
23 matters for which OFIA had not received prior notice?

24 MR. CASTRILLI: That's correct.

25 THE CHAIRMAN: Prior to presenting their

1 case?

2 MR. CASTRILLI: That's correct.

3 THE CHAIRMAN: Otherwise they could deal  
4 with it in direct?

5 MR. CASTRILLI: That's right.

6 THE CHAIRMAN: Thank you.

7 MR. CASTRILLI: So my submission is, Mr.  
8 Chairman, that they should organize themselves  
9 accordingly with respect to the general matters which  
10 clearly are at issue in this hearing and have been for  
11 quite some time.

12 Now, Mr. Chairman, having gone that far,  
13 I would like to, with your indulgence, state clearly  
14 for the record precisely why the industry's motion -  
15 not between the lines now but on the lines - which  
16 parrots our request for relief on an equity basis is,  
17 however, not worthy of the same kind of remedy we seek  
18 in relation to the Ministry of Natural Resources' case  
19 and that is because our relief is based on what the  
20 Environmental Assessment Act authorizes as our  
21 entitlement to prehearing discovery from the Ministry  
22 from Natural Resources in its capacity as proponent.

23 There is no, I repeat, no statutory basis  
24 for the relief sought in my friend Mr. Cosman's motion.  
25 I would go further than that, there is not any basis

1 for the relief sought at common law. And to illustrate  
2 my point I would like to refer you to our three grounds  
3 for relief found in our motion, which I understand is  
4 before you.

5 Mr. Chairman, am I correct in assuming  
6 that the Board has a copy of what is Regulation 205-87?  
7 If not, I can provide copies to the Board and the  
8 parties.

9 THE CHAIRMAN: We have looked at them at  
10 the time we originally received the motion, but I do  
11 not think we have them in front of us now so.

12 MR. CASTRILLI: I would be prepared to  
13 make it available to you at this time.

14 THE CHAIRMAN: Very well.

15 MR. CASTRILLI: (handed)

16 Mr. Chairman, it has been so long since I  
17 have seen so many counsel here, I just don't know how  
18 many copies I should have copied.

19 THE CHAIRMAN: I am not sure whether that  
20 is a good thing or a bad thing, Mr. Castrilli.

21 MR. CASTRILLI: Is there any one who  
22 doesn't have a copy now? All right. I actually do  
23 have some extras. I can't imagine how many I actually  
24 photocopied.

25 Mr. Chairman, as you will note from our



1 motion, the first ground we set out was that the  
2 environmental assessment submitted by the proponent is  
3 incomplete and does not comply with the requirements of  
4 Section 2 of the regulation I put before you,  
5 Regulation 205-87.

6 I should note, by the way, Mr. Chairman,  
7 I have just provided you with an excerpt of that  
8 regulation, the relevant section being just Section 2.

9 Now, in addition to meeting the  
10 requirements of Section 5(3) of the Environmental  
11 Assessment Act respecting the content of an  
12 Environmental Assessment, an Environmental Assessment  
13 submitted by a proponent must also satisfy the  
14 provisions of Section 2 of Regulation 205-87, and if I  
15 can just paraphrase that section, it requires the  
16 proponent to:

17 "...list all studies and reports under  
18 the control of the proponent which were  
19 done in connection with the undertaking  
20 or matters related to the undertaking and  
21 list all studies and reports done in  
22 connection with the undertaking or  
23 matters related thereto of which the  
24 proponent is aware and that are not under  
25 the control of the proponent."

1                   Now, without putting too fine a line on  
2                   it, even a cursory examination of the Ministry's  
3                   Environmental Assessment reveals that many, if not most  
4                   of the numerous studies, reports and documents attached  
5                   to the witness statements have not been seen to date  
6                   and were not listed or referred to in the Environmental  
7                   Assessment.

8                   Just to give you two examples out of  
9                   many - I could do it by panel, but I don't think it is  
10                  necessary - I will just give you two examples. In  
11                  Panel 4, the SOARS Report; also in Panel 4, the Dixon  
12                  Report, a document that is now six years old, no  
13                  reference in the Environmental Assessment to either of  
14                  those.

15                  Panel 5, both Documents 1 and 2 which I  
16                  believe are both dated April, 1988 and, of course, the  
17                  obvious question is: What is to come that we haven't  
18                  seen?

19                  And, accordingly, Mr. Chairman, it is our  
20                  submission there has been prima facie non-compliance  
21                  with both the letter and spirit of Section 2 of the  
22                  regulations and it is our position that this breach has  
23                  and will continue to substantially impair my client's  
24                  ability to prepare our case and to cross-examine on the  
25                  Ministry of Natural Resources' case.

1                   For one thing, it makes it extremely  
2                   difficult for my clients, with limited resources, to  
3                   know which panels we should be focusing our limited  
4                   resources on and which panels, quite frankly, we should  
5                   forego cross-examination.

6                   Further, when one looks at the  
7                   proponent's outline of evidence dated January 25, 1988,  
8                   which I actually referred to in my motion, it only  
9                   refers to portions of the Environmental Assessment  
10                  Document and not to the voluminous material we find in  
11                  each of the witness statements.

12                  Now, if I wanted to be graphic about it I  
13                  could have brought in all eight volumes of the witness  
14                  statements and stacked them at one end of the table, an  
15                  exercise - not interrogatories, just the witness  
16                  statements filed - a set of material that now I think  
17                  approaches 4,000 pages and is about two feet high, and  
18                  to balance that at the other end of the table I could  
19                  put the Class Environmental Assessment Document, a  
20                  document of 250 pages.

21                  In fact, if we look at the - so if you  
22                  want you can assume that is in fact before you but  
23                  whereas in fact it isn't - in fact when you look at the  
24                  outline, Mr. Chairman, the January 25, 1988 outline,  
25                  approximately 30 pages of the Environmental Assessment

1 have been referred to in the January, 1988 outline to  
2 this point in time.

3 Now, Mr. Chairman, as you are well aware,  
4 we have looked at and heard evidence about  
5 substantially more than 30 pages of material in the  
6 witness statements to date.

7 Now, let me continue with this argument  
8 with respect to why my motion is based on a statute and  
9 I am not quite sure what Mr. Cosman's motion is based  
10 on. Having all of the proponent's reports in advance  
11 would permit my clients, as I think is contemplated by  
12 Section 2 of the regulations, to make an informed  
13 choice about what parts of the Ministry's case to focus  
14 on.

15 As it is, for all we know maybe we should  
16 have arrived at Panel 10 and not cross-examined until  
17 then. We cannot know, we haven't seen two-thirds of  
18 the evidence. Without having all the remaining panel  
19 evidence, I cannot make a meaningful or an informed  
20 judgment or decision about which panels to forego but,  
21 quite frankly, eventually exhaustion of funds would  
22 make the decision for me.

23 So it is my submission that the  
24 Ministry's non-compliance with Section 2 is evident on  
25 the face of the record and has seriously undermined the



1 ability of the parties, my clients, the Minister of  
2 Environment, in particular, to review the Environmental  
3 Assessment in a meaningful way and this has, in turn,  
4 had a direct and substantial impact on my client's  
5 ability to prepare for the case we believe, or I guess  
6 have to guess we have to meet.

7 Now, having said that I would like to  
8 turn to the second ground of our motion which is on  
9 page 2 under Item (b) and we outlined at that point  
10 that the Environmental Assessment cannot be properly  
11 reviewed by the Minister or the public contrary to  
12 Section 7 of the Environmental Assessment Act.

13 I believe this is the second ground that  
14 distinguishes our position from that of the industry  
15 motion leaving aside, as I have outlined earlier, we  
16 are prepared to accept the Ministry's proposal as it  
17 relates to our motion. I believe it is important for  
18 the Board to recognize the distinctions that must be  
19 made between my client's position and the position of  
20 the industry on their motion so that you can properly  
21 consider what basis and what weight, if any, to give to  
22 the industry's submissions and their motion.

23 Our second ground for the motion is that  
24 the Environmental Assessment could not properly be  
25 reviewed by the Minister of the Environment or the

1 public contrary to Section 7 because of the fact that  
2 the MNR has decided up to now to file its Environmental  
3 Assessment in a piece meal fragmentary manner as  
4 attachments to the witness statements. In my opinion,  
5 this is completely unprecedented and, in my submission,  
6 is a dramatic departure from the normal practice  
7 contemplated by Section 7.

8 As you are aware, Mr. Chairman, when an  
9 Environmental Assessment of an undertaking is submitted  
10 by a proponent to the Minister, the Minister must cause  
11 a review of the assessment to be prepared and must give  
12 notice of the receipt of the assessment and completion  
13 of the review to the public. The public is then  
14 permitted to inspect the review and assessment and make  
15 determinations about its role in any subsequent  
16 hearing. In this case, the Minister has prepared a  
17 review, in our submission, on little more than Volume I  
18 of the Environmental Assessment.

19 It is our position that 99 per cent of  
20 the Environmental Assessment is contained as  
21 attachments to the witness statements that have been  
22 and will be filed over the last six months and  
23 probably, or otherwise in the absence of the Ministry's  
24 proposal, over the next 12 months. And, in my view,  
25 they are the remaining volumes of the Environmental

1       Assessment, much of which the parties and the Board  
2       have yet to see.

3                       Now, it is also my submission, Mr.  
4       Chairman, that the provisions of Section 7 of the Act  
5       are integral to the public participation envisioned by  
6       the statute, and that is because the section enables  
7       the Minister and the public to be apprised at the  
8       outset, and I would underscore at the outset, of the  
9       nature, scope and extent of the undertaking as well as  
10      the evidence, documents, reports, studies, other data  
11      and material offered by the proponent in support of the  
12      undertaking.

13                      This disclosure, in turn, is intended to  
14      permit a comprehensive and meaningful review by various  
15      government agencies on the different aspects of the  
16      undertaking. More importantly, Mr. Chairman, public  
17      inspection of the Environmental Assessment and the  
18      government review will allow potential intervenors,  
19      such as my clients, to do four things which they have  
20      not been permitted to do up to this point:

21                      Firstly, to know the subject matter of  
22      the undertaking and all the information that supports  
23      it; secondly, to determine if their interests may be  
24      affected by the undertaking; thirdly, to decide whether  
25      to exercise their statutory rights under the Act to

1 participate in the hearing; and, fourthly, to prepare  
2 themselves and their case to meet the evidence the  
3 proponent relies upon in support of its application for  
4 an approval.

5 THE CHAIRMAN: And you do not support, I  
6 take it from what you are saying, that the EA process  
7 is an on-going evolutionary type of process?

8 By that I say, Mr. Castrilli, that for  
9 instance, the Baskerville Report, the Rosehart Report  
10 and several other reports would not have been able to  
11 have been attached at the time the EA was submitted to  
12 the Ministry in accordance with Section 5(1) because,  
13 as I understand it, they were not completed at that  
14 point in time and that would apply to a number of other  
15 reports and studies, et cetera.

16 MR. CASTRILLI: Mr. Chairman, you recall  
17 that I am the one who introduced most of those  
18 documents, not the Ministry.

19 THE CHAIRMAN: No, I realize that in the  
20 overall evidence, I am not addressing which party put  
21 it in, but what I am saying is is that the Board, as  
22 you know, in a series of decisions, in a series of  
23 previous cases has taken a look at the wording of the  
24 statute, particularly the definition of an  
25 environmental assessment in the defintion section of



1 the statute, and then tried to apply that definition to  
2 the process, the hearing process itself, and have found  
3 certain inconsistencies which the Board chose to view  
4 as incapable of being extended to the hearing process.

5 By that I mean, in most cases on a  
6 comprehensive complex case, the EA is submitted to the  
7 Minister years before you get to the hearing stage, and  
8 if you are trying to preclude parties from addressing  
9 matters and issues which arise in the interim between  
10 the submission of the document to the Minister and the  
11 actual hearing, then the Board would be faced with  
12 rendering its decision, not on the best evidence, but  
13 on evidence that may be three and four years in the  
14 past.

15 And, consequently, has viewed in a number  
16 of cases and has stated this I think in a number of  
17 decisions, that the EA process, when it gets to a  
18 hearing, has to be viewed as evolutionary in nature and  
19 should include all evidence that is both contained in  
20 the documentation and is adduced at the hearing itself.

21 In the Board's view, where there is a  
22 hearing those who would normally get an opportunity to  
23 review the proponent's case, such as the reviewing  
24 agencies as required by Section 7 and the public, would  
25 have an opportunity to do so at the hearing itself.

1 And then, at the end of the day, the Board would be in  
2 a position to render its decision on "the best  
3 evidence" and, of course, the most recent and  
4 up-to-date evidence.

5 Now, that is not going to the question in  
6 any way, shape or form of what kind of notice of  
7 documentation should be required in terms of ensuring  
8 that the parties are not met with surprise and can  
9 adequately prepare their case for presentation to the  
10 Board. That is a separate question.

11 The only thing I wish to bring to your  
12 attention - and I am sure you are aware because I am  
13 sure you read some of the Board's past decisions - is  
14 looking at the statute and looking at the wording, in  
15 the Board's respectful opinion, realizing that this is  
16 a statute enacted by the legislature, it does not seem  
17 to address the hearing situation as opposed to a  
18 situation where there is no hearing and the Minister  
19 renders the decision on the EA in the absence of a  
20 hearing. Then when you look at Section 1 and the  
21 definition of EA, that is all the Minister has in front  
22 of him when we renders his decision at that point in  
23 time.

24 It does not seem a hundred per cent, at  
25 least to the Board, to envisage the fact that there

1 will be submission of documentation at a point in time  
2 followed by a hearing which may be years later. And I  
3 just think it would be helpful to all the parties at  
4 this point in time to put forward the Board's view,  
5 that there has never been, as you are probably aware, a  
6 judicial pronouncement on the Board's interpretation of  
7 the statute in the past. We are certainly not inviting  
8 one at this stage of these proceedings, but it is  
9 something that I think everybody has to take into  
10 account as to how you can conduct a hearing in a  
11 meaningful way with the type of evidence that actually  
12 comes forward at a hearing.

13 And in the sense of an environmental  
14 assessment, which extends over a period of years from  
15 when the document itself was filed, it seems to be  
16 evolutionary because studies are ongoing. Everything  
17 doesn't grind to a halt and stop the moment an EA is  
18 filed with the Minister pursuant to Section 5(1). And  
19 the Board and the public and the reviewing agencies  
20 should have the benefit, the Board feels, of all of  
21 these studies and all of the information up to the  
22 point of decision.

23 So I did not mean to interrupt your  
24 presentation, but...

25 MR. CASTRILLI: No, it's quite all right.

1 My comments will actually address that issue later and  
2 I can actually deal with some of it now.

3 First of all, I agree with you that the  
4 process is evolutionary, but the upfront requirements  
5 that the regulations and the statute impose on the  
6 Ministry of Natural Resources have not been complied  
7 with here. So whether one wants to call it the EA or  
8 the list of studies and documents relied on in support  
9 of the EA, there has not been compliance, Section 2 of  
10 Regulation 205-87, Section 38, I would add, of the  
11 Board's rules.

12 And let me speak now to the issue of the  
13 evolutionary process of how the Ministry has developed  
14 its material. You will note that earlier I referred to  
15 some of the material that is actually to be found in  
16 the witness statements we have seen so far. I  
17 mentioned, for example, the Dixon Report. The document  
18 is dated 1982. We didn't see it before Panel 4.

19 In Panel 1, all of the references -- all  
20 the land-use documents referred to there, some are  
21 dated 1974, some are dated 1980, some are dated 1983.  
22 I don't understand how the evolutionary process is  
23 meant -- the evolutionary process is meant to catch  
24 things that will be developed in future or have been  
25 developed since the filing of the original document, if



1       you like. The evolutionary process is not meant to  
2       eliminate what should be the proper filing of  
3       everything relied upon that predates the document  
4       itself.

5                       So I don't think the evolutionary  
6       argument applies to how the Ministry of Natural  
7       Resources has proceeded in this case. An awful lot of  
8       what they have filed in this proceeding is material  
9       that in fact predates the Environmental Assessment  
10      Document which we did not know about. And if it is  
11      important enough for the Ministry of Environment to  
12      file it now in the manner they have been filing it --

13                     THE CHAIRMAN: Ministry of Natural  
14      Resources.

15                     MR. CASTRILLI: Ministry Natural  
16      Resources to file it in the manner they have been  
17      filing it, if they think it is important enough that  
18      the Board has to hear it, then why wasn't it either  
19      part of the Environmental Assessment or part of the  
20      list of studies and documents they should have relied  
21      upon and how could they not know about the Dixon  
22      report? It is not something they are developing now,  
23      the document has been written for over six years.

24                     And I think we will see that -- we have  
25      seen that in other documents in the first four panels

1 and some of the additional material we see in Panel 6  
2 and 7. And, indeed, we are also not talking about  
3 original research here, Mr. Chairman, we are not  
4 talking about field work that could not be done before  
5 June, 1988 or July, 1988 or August, 1988.

6 In that sense, all we are talking about  
7 is the fact the Ministry has not written the material  
8 until now, not that they couldn't write it before now.  
9 And that, in my respectful submission, is completely  
10 different from the situation we normally find in an  
11 environmental assessement. We don't get 1 per cent of  
12 the material from the proponent at the beginning and  
13 the other 99 per cent as we go along. That has not  
14 been the procedure that I am familiar with before this  
15 Board and it is certainly not what is contemplated by  
16 the Act and the Regulations.

17 THE CHAIRMAN: Ms. Murphy, I take it you  
18 want to object to something? You will have a right of  
19 reply in response to this.

20 MS. MURPHY: I appreciate that. I would  
21 just like to clarify, I was under the misapprehension  
22 that my friend had withdrawn his motion. Can he remind  
23 us why he is getting into this? I am a bit confused.

24 MR. CASTRILLI: Mr. Chairman, I set out  
25 at the outset why you have to have in the context the

1 industry's motion versus our motion. I am setting out  
2 the basis upon which you have to consider our motion  
3 and why it is completely distinct from the basis upon  
4 which my friend put his submissions to you.

5 And I cannot, in fairness, do that  
6 without in fact establishing the basis upon which my  
7 entitlements to the remedies I was seeking I think  
8 follow as a matter of course, and I am still waiting to  
9 hear from Mr. Cosman as to what exactly is the  
10 statutory basis for his submissions.

11 And I am going to be getting to my  
12 submissions with respect to the specific comments as we  
13 go along, but I think in fairness I cannot set the  
14 context without in fact setting the context.

15 THE CHAIRMAN: Well, we do not want to  
16 get into a procedural wrangle about whose motion it is,  
17 et cetera.

18 I think that you have adopted, in effect,  
19 the Ministry's proposal because it addresses, to a  
20 large extent, the remedies that you are seeking under  
21 your own motion. But you are opposing certain aspects  
22 of Mr. Cosman's clients' motion and you are setting the  
23 stage in your argument now as to why you are and your  
24 clients are in a different position than Mr. Cosman and  
25 should be entitled to the remedy in fact proposed by

1 the Ministry and he should not be entitled to the  
2 remedies sought by him.

3 MR. CASTRILLI: Precisely.

4 THE CHAIRMAN: Okay.

5 MR. CASTRILLI: Mr. Chairman, if I could  
6 continue then with respect to Section 7 of the Act. To  
7 put it very concisely, Section 7 of the Environmental  
8 Assessment Act is intended to promote public  
9 understanding of the proposed undertaking and to enable  
10 the public to reach informed decisions with respect to  
11 their participatory rights. That is what Section 7 is  
12 all about.

13 And it's our submission, Mr. Chairman,  
14 that the manner by which the Ministry has proceeded to  
15 date, recognizing they are now proposing a substantial  
16 change in that, is material non-compliance with Section  
17 7 of the Act and has substantially prejudiced my  
18 client's statutory rights and ability to make a  
19 meaningful contribution to the hearing process.

20 THE CHAIRMAN: Now, can I just interrupt  
21 you and get this straight at this point, if you can  
22 tell us. You are alleging in your submissions that  
23 there have been material breaches of the Regulation in  
24 Section 7 of the Act.

25 You are also indicating that you are



1 supporting the Ministry's proposal in terms of, if I  
2 might put it this way, if in fact there has been a  
3 breach, of rectifying the breach. You are not going to  
4 be taking the position, I take it later, depending on  
5 what the Board rules in connection with the overall  
6 motions, that should the Board find favour with the  
7 Ministry's proposal or some aspects of it, that you are  
8 going back at the end of the day, like two years down  
9 the road, to the argument of material breach of a  
10 regulation in the statute itself.

11 If you are going to be doing that, tell  
12 us now.

13 MR. CASTRILLI: Mr. Chairman, I think our  
14 position is clear. We have carefully considered the  
15 Ministry's proposal and we believe it meets material  
16 concerns we have and have had up to now. So, in that  
17 sense, I don't think it would lie in my mouth to come  
18 back two years from now and say otherwise.

19 THE CHAIRMAN: Very well.

20 MR. CASTRILLI: I would just like to  
21 note, you asked a question earlier about the  
22 evolutionary process and I think I responded by saying  
23 that quite a number of the documents we have seen in  
24 the witness statements to date are, in fact, not part  
25 of the evolutionary process.

1                   I guess, if I could put it this way, they  
2 predate evolution and should have in fact been part of  
3 the material from the outset.

4                   THE CHAIRMAN: B.E. as opposed to B.C.?

5                   MR. CASTRILLI: That's right.

6                   Now, the third ground we set out in our  
7 motion which I think, in particular, is the one that is  
8 echoed in the industry's motion, set out at page 2 of  
9 our motion, because what it says is that my clients, as  
10 a party to the proceedings, have a right to know the  
11 full case they are expected to meet prior to the  
12 commencement of the hearing and that that has been  
13 substantially prejudiced by the incomplete  
14 Environmental Assessment.

15                   In other words, we link item (c) directly  
16 back to items (a) and (b); that is, non-compliance of  
17 Section 2 -- or with Section 2 and non-compliance with  
18 Section 7 as the basis upon which we argue we have a  
19 full right to know the case we are expected to meet.  
20 The legislature has said that and the drafters of the  
21 regulations have said that.

22                   They have said in effect that -- let me  
23 step back a moment. The position we take in that third  
24 ground is that we have been substantially prejudiced to  
25 now by the incomplete Environmental Assessment and the

1 periodic filing during the course of the hearing of  
2 witness statements with extensive supporting documents,  
3 studies and reports which properly should have formed  
4 part of the Environmental Assessment precisely because  
5 we have a statutory right to the full case -- to know  
6 the full case we are expected to meet prior to the  
7 commencement of the hearings.

8 Now, my friend --

9 THE CHAIRMAN: You are not alleging, Mr.  
10 Castrilli, that the Environmental Assessment is  
11 incomplete as opposed to the documentation on which the  
12 Environmental Assessment is based has not been  
13 disclosed?

14 MR. CASTRILLI: Well, document -- sorry,  
15 I was going to call it Volume I of the Environmental  
16 Assessement.

17 THE CHAIRMAN: Because as you are aware,  
18 we have to rule as part of our decision on the  
19 acceptability or completeness of the Environmental  
20 Assessment and that goes back to my further discussion  
21 about it being a process. That would come at the end  
22 of the day, at the end of the hearing.

23 MR. CASTRILLI: That's right. Mr.  
24 Chairman, just so I am not misunderstood, I have no  
25 misapprehension and it certainly has been my experience

1       that during the course of environmental assessment  
2       proceedings that inevitably additional new information  
3       will come forward.

4               There is no doubt in -- there should not  
5       be any doubt in anyone's mind that I am suggesting that  
6       once the hearing begins the Ministry of Natural  
7       Resources can file nothing further. I am certainly not  
8       taking that position. I recognize that evolution  
9       permits the development of further material.

10              But the position I am taking, Mr.  
11       Chairman, is that most of what -- a lot of what we have  
12       seen up to now is stuff that -- excuse me, is material  
13       that could have been written and, in fact, was written  
14       years ago that we didn't see, didn't know about and  
15       have only had to respond to in a very limited time  
16       frame.

17              So I have no difficulty with the  
18       submission that as things develop the Ministry can put  
19       forward more information such as a supplementary this  
20       or asupplementary that. But I am saying that their  
21       entire Environmental Assessment, and the list of  
22       studies, et cetera, et cetera, does not, in my mind,  
23       lead one to the conclusion that they can file 1 per  
24       cent at the beginning of the hearing and the other 99  
25       per cent as they go along. That is the essence of the



1 position I am taking on that.

2 Now, Mr. Cosman outlined to you a number  
3 of submissions as to why he is entitled to the right --  
4 to the relief he is seeking. To deal with the last one  
5 first; that is, that the law is on his side.

6 As I recall from his comments, he  
7 referred you to, for example, the text of Mr. Justice  
8 Reid for one of his propositions that there is an  
9 entitlement to notice and a right to respond to  
10 allegations.

11 Now, I have already indicated that I am  
12 actually not in disagreement with Mr. Cosman with  
13 respect to a limited right of reply in the context in  
14 which I noted it earlier. But Mr. Justice Reid's text  
15 stands for a lot of propositions in addition to the one  
16 Mr. Cosman outlined and at page 93 of his text, Mr.  
17 Justice Reid makes the observation that --

18 THE CHAIRMAN: Which edition is that?

19 MR. CASTRILLI: This is Administrative  
20 Law and Practice, I believe it is the most recent  
21 edition.

22 THE CHAIRMAN: The most recent.

23 MR. COSMAN: Mr. Chairman, mine was the  
24 second edition, so it is the most recent edition, I  
25 believe.

1 MR. CASTRILLI: Yes.

2 THE CHAIRMAN: Thank you.

3 MR. CASTRILLI: Mr. Justice Reid outlines  
4 on that page:

5 "Since there is no common law right to  
6 discovery, unless a right is conferred by  
7 the relevant legislation none exists."

8 I think that is the essence of what my  
9 friend is seeking, he wants discovery. And my position  
10 is he is not entitled to it in common law and he is  
11 going to have to find it in the statute if he is going  
12 to be able to allege it at all.

13 And it is my submission that the  
14 Environmental Assessment clearly provides my clients  
15 with a right of discovery, vis-a-vis the Ministry of  
16 Natural Resources' case, as I have outlined previously  
17 in my discussions of Section 7 of the Act and Section 2  
18 of the Regulations. That is not -- that is  
19 emphatically not the situation with respect to the  
20 industry's motion.

21 And, quite frankly, because that is the  
22 case, the law relied upon my friend Mr. Cosman is of no  
23 particular relevance in these proceedings.

24 Now, Mr. Chairman, as I noted at the  
25 outset - actually I am coming to the end of my

1       submissions - we are not here dealing with an issue of  
2       denial per se by the Ministry of Natural Resources, we  
3       are very much, however, dealing with the issue of the  
4       Ministry's practice up to now of releasing this  
5       material in a fragmented, piece meal, drib and drab  
6       fashion.

7                       MS. MURPHY: This was in response to an  
8       order of the Board, Mr. Chairman, as to its decision.

9                       THE CHAIRMAN: Well, we will not go back  
10      and debate what we debated in the preliminary meetings  
11      that were held throughout the province, but there was  
12      some concern expressed - and, I believe, by your  
13      client, Mr. Castrilli - that if the Ministry was in a  
14      position to dump a lot of material on the various  
15      parties, they would experience some problems if they  
16      were receiving a number of witness statements for  
17      various panels at one time and yet still obliged to  
18      comply with the procedures that we set out with respect  
19      to interrogatories and replies to interrogatories.

20                      And there was some consensus, at least  
21      the Board felt there was some consensus at that time,  
22      for a phased production of some of the witness  
23      statements. Now, that was apart from the question of  
24      what was in those witness statements at that point in  
25      time.

1                   The Board was not aware of what would be  
2     in the witness statements and, therefore, comparisons  
3     could not have been made at that time as to whether or  
4     not it duplicated or did not duplicate documentation  
5     already in the Environmental Assessment. That is only,  
6     I would suggest to you, a position that we could look  
7     at in hindsight from a point in time such as today or  
8     at some point in the proceedings after all of this  
9     material to date has been in front of us.

10                  And without interrupting you any further,  
11     I just want to state one other thing. The Board finds  
12     it perfectly reasonable in a case of this nature, of  
13     its complexity and of the nature of the case, being the  
14     first class environmental assessment, the first case  
15     involving a management process, so to speak, as opposed  
16     to a site-specific or project-specific matter, to be  
17     able to look at the procedures again some time down the  
18     road after we have all had the experience of seeing how  
19     the evidence is flowing, how it is coming in, what  
20     problems are developing, if any, and the Board is  
21     perfectly willing to reconsider any previous procedural  
22     orders or rulings if it will better serve the interest  
23     of both the public, the parties and the hearing process  
24     in general.

25                  So I think what we are all looking for at



1       this point in time is not so much recriminations  
2       against what happened in the past, but looking at how  
3       we can better solve the process issues from this point  
4       forward.

5                   MR. CASTRILLI:  Yes.  No, I --

6                   THE CHAIRMAN:  I am not suggesting that  
7       you are doing anything to thwart that aim at all.

8                   MR. CASTRILLI:  No, Mr. Chairman, in fact  
9       if I haven't made it clear from the outset, I look with  
10      encouragement upon the Ministry of Natural Resources'  
11      proposal as stated in its memorandum of August 26th as  
12      an attempt to rationalize the process.

13                   And I have already indicated what parts  
14      of that proposal I agree with which, I believe, will  
15      substantially remedy the difficulties I have outlined  
16      over the last hour and which parts of the proposal -  
17      you must remember part of that proposal is in support  
18      of the industry's proposal I cannot accept.  And so I  
19      think it is incumbent upon me to set out as I have the  
20      reasons why I don't believe that part of the Ministry's  
21      proposal which attempts to accommodate the industry's  
22      motion as requested and, indeed, even goes beyond it,  
23      is something that you should entertain further beyond  
24      what I have submitted already with respect to the issue  
25      of a limited right of reply.

1                   Having said that, this is something I  
2 actually wish I had said at the beginning, it is sort  
3 of catchy: statutory disclosure delayed is statutory  
4 disclosure denied, and that is the essence of the  
5 motion we brought before you and why it really  
6 distinguishes our position from that of the industry.

7                   Just in passing, the other three  
8 submissions that were made by Mr. Cosman, the Board  
9 could dictate its own processes, I don't have any  
10 difficulty with that concept but you must keep in mind  
11 that there are statutory entitlements that we have not  
12 been accorded to date which will be met, in my  
13 opinion, by the proposal of the Ministry and the  
14 statute certainly does not say anything about the  
15 relief sought by Mr. Cosman and his clients.

16                   And, secondly, he sought -- or he noted a  
17 proprietary interest that will be affected by this  
18 hearing. I have suggested that the way to proceed with  
19 respect to that is the methods and the procedures that  
20 were adopted by the air safety enquiry and which I  
21 think are entirely relevant in these proceedings should  
22 such an event arise down the road. And, thirdly, they  
23 have noted that have been granted full party status,  
24 well, that still does not speak to what the legislature  
25 has said they are entitled to in their situation as

1 parties in support of an application.

2 In my submission, for the reasons I have  
3 set out, the Board ought not to grant the motion  
4 requested by OFIA, but, as I also noted, my clients  
5 would have no difficulty with a limited right of reply  
6 in the context in which I set it out earlier. Those  
7 are my submissions.

8 THE CHAIRMAN: All right, Mr. Castrilli.  
9 Just before you sit down there is just one question I  
10 think we would like you to address, if you can.

11 The Ministry put forward that any scoping  
12 exercise could not properly be carried out until after  
13 the Panel 15 evidence was delivered, although informal  
14 discussions may be ongoing along the way.

15 What is the position of your client with  
16 respect to any attempts to try and scope the issues in  
17 contention, the ones that you are opposed to  
18 specifically for your client, as well as the other  
19 parties being opposed as well, at any point prior to  
20 the Panel 15 evidence being produced?

21 Is there any realistic hope in your mind  
22 that anything can be done in that area?

23 MR. CASTRILLI: Well, let me say, I guess  
24 I am an eternal optimist. Let me go back a step to  
25 answer your question.

1                   I think, hindsight being 20/20, if we  
2           could have done this at the beginning of the hearing;  
3           that is, if we had everything "x" months in advance of  
4           the commencement of the hearing, and there would have  
5           been exchange of interrogatories in advance of the  
6           commencement of the hearing, clearly I think scoping  
7           would have been in order.

8                   I mean, Mr. Freidin might have  
9           discovered, for example, that there is redundancy  
10          inadvertently included in some of the later panels  
11          vis-a-vis some of the earlier panels. We might have  
12          been able to point that out to him and suggest: Look,  
13          do you really need to say this twice. That sort of  
14          thing I think is certainly possible if you are not  
15          under the pressure of a continuing hearing.

16                   Once you get into the situation of an  
17          ongoing hearing, I have to tell you, quite frankly, Mr.  
18          Chairman, my clients obviously do not have the  
19          resources to be hither and yond, to be attempting to  
20          deal with forthcoming interrogatories that are  
21          necessary, to be dealing with preparation for  
22          cross-examination, and also to have a third team  
23          dealing with the issue of scoping.

24                   That is something that I think is a  
25          severe burden to be placed on my clients, in addition



1 to the burdens that have already been placed on my  
2 clients as a result of the manner in which the hearing  
3 have progressed to this point.

4 But having said that, that is asking a  
5 lot of the parties in opposition to attempt to have  
6 this whole proceeding scoped on its backs -- on their  
7 backs, in effect. I hold out the possibility that  
8 scoping is possible if, for example, the Ministry -- I  
9 mean, they have suggested, for example, and I think it  
10 is a good suggestion, that proposed terms and  
11 conditions be filed and they have I think suggested  
12 Panel 15.

13 It is conceivable to me that -- or there  
14 is no reason why I presume they could not in fact do it  
15 earlier, maybe not in respect of the first 15 panels of  
16 evidence but perhaps in respect of, say, the first  
17 five. I think in those circumstances my clients would  
18 be prepared to consider attempting to respond in kind  
19 if we have all the information that we have asked for  
20 that we don't have or that relates to those, let's say,  
21 first five panels.

22 I am not unopposed to that in principle,  
23 it is not something I have had an opportunity to speak  
24 to my clients about, but I think it could be done that  
25 way. I think, quite frankly, Mr. Chairman, we are

1 going to be having more of these procedural discussions  
2 as we go along, but I think that is something our  
3 clients would be prepared to consider but, as I say, I  
4 don't have instructions with respect to that particular  
5 point.

6 THE CHAIRMAN: What would your position  
7 be, and you may have to consider this, if after the  
8 witness statements had been produced and the parties  
9 had an opportunity to look at them, that the Board in  
10 open session with the parties in front of them reviewed  
11 generally each panel's evidence with the hope of  
12 getting the various parties' agreement as to what was  
13 not in contention and, therefore, did not have to be  
14 addressed prior to that panel being put into the box  
15 and the evidence adduced in direct?

16 In other words, a major assist, if I  
17 might put it that way, by the Board to what would  
18 otherwise be private deliberations amongst the parties  
19 and their counsel?

20 MR. CASTRILLI: Well, Mr. Chairman, you  
21 are right, I would like to take instruction with  
22 respect to that, but in principle it is not a bad idea.

23 I think it is actually perhaps a very  
24 good idea with the proviso that the Board recognize  
25 that if we are going to be talking about scoping on

1 particular panels that have not yet actually had  
2 evidence adduced with respect to them, at a minimum I  
3 think my clients are going to have to have answers,  
4 full answers to interrogatories in order to fully  
5 assess our position with respect to those matters we  
6 haven't otherwise had evidence on. But I think in  
7 principle --

8 THE CHAIRMAN: Well, I think you are  
9 aware you cannot scope a panel's evidence after the  
10 panel has given the evidence.

11 MR. CASTRILLI: No, but we can scope  
12 before they testify if they have responded to our  
13 interrogatories.

14 THE CHAIRMAN: Well, that is another  
15 collateral issue, I agree. But if we are going to have  
16 any kind of scoping with respect to the issues we have  
17 to get at it, in the Board's view, prior to the  
18 witnesses being called and going through everything  
19 that is contained in their witness statements so that  
20 we can find out, if necessary, if some issues are not  
21 in contention, are not of concern to some of the  
22 parties - the major parties or some of the other  
23 parties - and just do not have to be handled in the  
24 same manner as if they were.

25 MR. CASTRILLI: I agree. In principle, I

1 think that is a reasonable approach to take. I think  
2 we would have to have at a minimum a reasonable  
3 opportunity for our experts to review the material that  
4 would be the subsequent subject of examination or  
5 cross-examination, and I think we would have to have  
6 our interrogatories answered.

7 Again, I would like to take that under  
8 advisement but, in principle, without going beyond  
9 that, I think that that is a good idea.

10 THE CHAIRMAN: Okay. And I will not  
11 repeat myself when we get to all of the other parties,  
12 but the Board would have the same inquiries of the  
13 other parties as to that kind of possibility. So that  
14 you might address it, if you can, in your submissions  
15 today and, if you cannot, then we may have to have this  
16 discussion at some later time on that issue.

17 MR. CASTRILLI: Mr. Chairman, I noted at  
18 the outset that I had been asked by representatives of  
19 Northwatch to read into the record a letter that they  
20 have addressed to you.

21 I am wondering whether it is appropriate  
22 to do it at this time or whether the Board would prefer  
23 to have copies of this document before I actually did  
24 that. I am in your hands with respect to that.

25 THE CHAIRMAN: How long is the



1 submission?

2 MR. CASTRILLI: There is a two-paragraph  
3 letter to myself and then there is a page and a half  
4 single-spaced letter to you.

5 THE CHAIRMAN: Have any of the other  
6 parties got copies of that?

7 MR. CASTRILLI: No, no, I only received  
8 this by way of fax yesterday and I haven't had an  
9 opportunity to do it.

10 THE CHAIRMAN: All right. I think what  
11 we will is, we have two submissions in that category,  
12 the one of Mr. Williams and now the one from  
13 Northwatch. Perhaps at the lunch break, Mr. Mander,  
14 would you arrange for copies to be distributed for  
15 every one who has not got them and perhaps before we  
16 rise today we can just read them into the record so  
17 that everyone has a copy in front of them.

18 MR. CASTRILLI: That is fine. Thank you,  
19 Mr. Chairman, those are my submissions.

20 THE CHAIRMAN: Thank you.

21 MR. FREIDIN: Mr. Chairman, I understand  
22 that some time today we will, if only briefly, be  
23 addressing whether we are starting next Tuesday.

24 THE CHAIRMAN: Yes, I understood we  
25 would.

1                   MR. FREIDIN: I don't want any one to  
2       lose site of that notwithstanding the interest in the  
3       submissions that are being made.

4                   THE CHAIRMAN: Okay. Perhaps we could  
5       move now, Mr. Hunter, to you.

6                   MR. HUNTER: Yes, Mr. Chairman. I am  
7       wondering -- well, perhaps if I can be heard I will  
8       work from here, if that is acceptable, Mr. Chairman.

9                   I am going to be a little scattered  
10      because of what I heard from Mr. Castrilli and perhaps  
11      I will try to help you by firstly stating our responses  
12      to the various motions that are before you, so at least  
13      my paper is clear.

14                  Firstly, we support Mr. Castrilli's  
15      motion and I adopt all of his reasons for the  
16      requirement that MNR should present its evidence in one  
17      package as identified in the MNR proposal.

18                  THE CHAIRMAN: In the staged manner that  
19      they are proposing?

20                  MR. HUNTER: That's correct. I do so,  
21      however, Mr. Chairman, with great reluctance because I  
22      do not believe that it will address the issues; that  
23      is, the issue of time. I will recommend that there be  
24      either an amendment to Mr. Castrilli's motion or to the  
25      MNR motion which would require MNR to lead all of its

1 evidence within a fixed period of time upon the  
2 presentation of its written evidence and that they be  
3 limited to no more than two days per panel.

4 So, therefore, we are talking  
5 approximately 10 panels, as they have identified,  
6 therefore, they would have 20 days in which to lead all  
7 of their evidence.

8 Secondly, I reject strongly the Ontario  
9 Forest Industry's motion and I adopt all of the reasons  
10 stated by Mr. Castrilli. I would argue, and I would  
11 also reject the MNR proposal for the filing of  
12 statements as they have identified in their motion.

13 I strongly believe that both of those  
14 motions contain an inherent danger which could be used  
15 at any point in time to suggest that any comment made  
16 against the EA Document which would be adverse or  
17 critical could be considered to be caught by those  
18 motions and, therefore, would require some form of  
19 pre-notification to MNR and to the forest industry.

20 Thirdly, I will address the issue that  
21 you have raised, Mr. Chairman, with respect to scoping.  
22 I do not want to relitigate what happened in the past,  
23 but I believe, Mr. Chairman, if you have the energy or  
24 the desire to re-address yourself to the preliminary  
25 hearings in February - I will try to give you the exact

1 cite - February 3, '88, Volume III, pages 296 to 308.

2 Ms. Murphy and I had a considerable exchange over this  
3 issue with yourself and Mr. Eisen. I do not believe  
4 that anything has changed since that point in time.

5 I find it extraordinary that the Ministry  
6 of Natural Resources would suddenly say to the other  
7 parties: We want your cooperation to scope this  
8 hearing after they have submitted virtually all of  
9 their evidence. They are asking us to rationalize this  
10 hearing on our backs and not on their backs. And that  
11 is why, Mr. Chairman, I feel very strongly that if you  
12 adopt Mr. Castrilli's motion that you should do so and  
13 also require them to lead all of their oral evidence,  
14 then we can sit down and begin to scope this agreement.

15 THE CHAIRMAN: Sorry, would you repeat  
16 that last submission you made?

17 MR. HUNTER: In other words, if MNR is  
18 required in a timely and reasonable fashion to  
19 demonstrate to us cooperation, to demonstrate to us  
20 that they will rationalize their evidence, then there  
21 is a basis to sit down and say: Fine, we will begin to  
22 try to scope our evidence.

23 As I understand Ms. Murphy's point, we  
24 are going to run our evidence, it could take anywhere  
25 from six to nine months, nothing has changed.



1                   Mr. Castrilli addressed the issue of  
2           funding and I will come to that at a later point in  
3           time.

4                   I think, therefore, simply to go back,  
5           Mr. Chairman, and I am going to try to cut my  
6           presentation short because Mr. Castrilli has  
7           substantially identified many of the arguments that I  
8           was going to raise and, therefore, I don't see any need  
9           to repeat them, to take your time with them.

10                   As I understand this process, MNR would  
11           provide us with all of their written evidence. I think  
12           it is absolutely necessary that they do so and, as I  
13           have stated, I adopt Mr. Castrilli's reasons for that.  
14           Let me identify to you one simple reason why we need it  
15           and we need it desperately. I will refer to - and I  
16           will have to read it into the record because I do not  
17           have all of the -- I don't have copies of it, if I may  
18           be permitted - Interrogatory Panel 6, Question 23:

19                   "On page 141 the statement is made that:  
20                   'The Class Environmental Assessment for  
21                   Timber Management recognizes the special  
22                   interests that natives generally have in  
23                   natural resource matters. Please  
24                   indicate at what sections in the Class EA  
25                   these special interests are recognized

1                   and provide copies of any background  
2                   reports or examples of timber management  
3                   plans which substantiate this  
4                   statement.'"

5                   Answer: "See the Class Environmental  
6                   Assessment Document page 7 and all  
7                   references to notice requirements, 153,  
8                   156, et cetera. In addition, all  
9                   evidence led at the hearing is part of  
10                  the environmental assessment and should  
11                  also be noted. Examples of timber  
12                  management plans will be provided by  
13                  Panel 15."

14                 I interpret that, Mr. Chairman, to mean  
15                 that those matters that affect native interests are  
16                 going to be strung out from Panel 6, if not Panel 1,  
17                 through to Panel 15, or is all evidence in relationship  
18                 to native people going to be succumbed under Panel 6.

19                 To follow on Mr. Castrilli's point, Mr.  
20                 Chairman, we simply cannot survive. We don't know  
21                 which panels to appear at any longer. We don't know  
22                 what oral evidence they will lead. By and large, the  
23                 majority of the evidence, as I understand the  
24                 transcripts, complements the evidence that has been led  
25                 in written form.

1                   I presume that that will continue to be  
2     the case, but I cannot take any chances, in the sense  
3     that they made lead additional information in their  
4     oral evidence that we have no knowledge of or that we  
5     would have no knowledge of subsequent to the  
6     transcript. It is, therefore, imperative for us to  
7     have all of the evidence assumed as quickly as  
8     possible.

9                   As I have indicated to you, Mr. Chairman,  
10    if it is your desire to substantially shorten this  
11    hearing I believe you must do so by also requiring MNR  
12    to present its oral evidence in a condensed, precise  
13    and timely fashion. It is now November -- sorry, it is  
14    now August.

15                  By November we would have had seven  
16    panels. It is like a bad movie, Seven Brides for Seven  
17    Brothers. We will then take a break, presumably, from  
18    December through to February, as I understand the  
19    proposal. We would have essentially covered less than  
20    half of the evidence and we will be moving into the  
21    first year of the hearing. We are almost ending the  
22    first year of the hearing. If, as it has been  
23    suggested through rumour, it could take MNR an  
24    additional six to nine months to complete its case, we  
25    will then be moving well into the second year.

1                   I do not know the position of Mr.  
2   Castrilli, I can simply speak for my client and I  
3   appreciate, Mr. Chairman, that you do not make these  
4   decisions, our funding expires March, 1989. We cannot  
5   make any commitments beyond that time.

6                   THE CHAIRMAN: And you no doubt, as well  
7   as Mr. Castrilli, as well as any of the other parties  
8   that have sought funding will be taking appropriate  
9   steps to--

10                  MR. HUNTER: Yes.

11                  THE CHAIRMAN: --see if something further  
12   can be done?

13                  MR. HUNTER: Let me put the context or  
14   try to set an additional context, Mr. Chairman. If we  
15   assume it will take nine months to lead the evidence,  
16   we are then moving well into the end of the second year  
17   before the MNR case is completed.

18                  The conclusion is quite obvious, we then  
19   have to go back yet again into another funding year to  
20   government to obtain funding to permit us to even begin  
21   to lead our own case.

22                  Accordingly, Mr. Chairman, it is within  
23   our need and desire to facilitate this Board in doing  
24   whatever is reasonable and fair to substantially  
25   advance this hearing. And I believe, Mr. Chairman,



1 that fairness requires that this Board take a very  
2 strong position with the Ministry of Natural Resources,  
3 that it take a chance on the issue of fairness and  
4 balance the public interest and say that MNR is  
5 required to complete its case by a time certain in  
6 order to allow for other parties to have a reasonable  
7 opportunity to present their case.

8 THE CHAIRMAN: Mr. Hunter, as you are  
9 probably aware, and I know you are, we canvassed the  
10 idea of limiting oral testimony for the direct evidence  
11 earlier and it was fully argued before the Board at  
12 that time and the Board at that point in time, for  
13 various reasons, decided that it would not impose that  
14 restriction because of the different way the parties  
15 would have been treated given the fact that the  
16 Ministry at that point in time already had unrestricted  
17 time to present the first, I guess at that point in  
18 time, four panels.

19 Are you suggesting, if the Board at this  
20 point reconsidered that earlier position and did limit  
21 the amount of time that the Ministry could take with  
22 respect to presenting oral direct evidence, that other  
23 parties would also be so restricted, including your  
24 own?

25 MR. HUNTER: We will. I can't speak for

1 any other party.

2 THE CHAIRMAN: But your submission  
3 inviting the Board to take that position is that if we  
4 were to require the Ministry to put in their case by  
5 restricting the time for presenting oral direct  
6 testimony, in fairness, the other parties who would  
7 come after them, including those in opposition, would  
8 also be so restricted? Is that your position?

9 MR. HUNTER: I cannot speak, Mr.  
10 Chairman, for the other parties.

11 THE CHAIRMAN: No, I am just asking for  
12 your position.

13 MR. HUNTER: Yes, my position is that we  
14 will negotiate a time certain in terms of the  
15 presentation of oral evidence.

16 THE CHAIRMAN: And, therefore, it is not  
17 a restriction in terms of each of the panels, as  
18 opposed to an end date for the completion of their  
19 case; is that what you are --

20 MR. HUNTER: That's correct. I don't  
21 know what MNR would choose. I simply chose, Mr.  
22 Chairman, 20 days on the presumption that it would  
23 perhaps not be unreasonable for them to lead -- to be  
24 allowed two days per panel.

25 THE CHAIRMAN: For direct?

1                   MR. HUNTER: That's correct, Mr.  
2 Chairman.

3                   THE CHAIRMAN: And cross-examination, of  
4 course, would be unlimited.

5                   MR. HUNTER: You can't control that.

6                   THE CHAIRMAN: And re-examination would  
7 be, in effect, unlimited depending on what arises out  
8 of cross-examination.

9                   MR. HUNTER: I do not think you can -- as  
10 I say, I am not being naive about this. You have to  
11 weight in my view, Mr. Chairman, two very substantially  
12 competing interests and they are not going to be  
13 resolved in its entirety by Mr. Castrilli's motion.

14                  THE CHAIRMAN: Well, one of the reasons  
15 for the Board taking the position it did a few weeks  
16 ago was the fact that the parties in opposition, in the  
17 Board's view, would be treated differently and one  
18 could argue unfairly treated in view of the fact that  
19 the Ministry to this point in the hearing had had the  
20 opportunity to spend as much time as it wished in  
21 presenting the panels to the point of the earlier  
22 motion.

23                  Now, if the parties in opposition do not  
24 feel that if restrictions, in terms of the presentation  
25 of direct evidence, were imposed as a result of the

1 ruling to come down from the Board over what we are  
2 hearing today, then some of that perceived unfairness  
3 disappears.

4 MR. HUNTER: Mr. Chairman, I can only  
5 respond, as I say, for my client, and I would hope that  
6 my fellow counsel would at least consider what I am  
7 proposing.

8 THE CHAIRMAN: Because what you are  
9 proposing would affect them in the sense that when they  
10 got to present their case they would also be so  
11 limited.

12 MR. HUNTER: I think, Mr. Chairman, I am  
13 trying to be candid on one hand, professional, and also  
14 obviously protect my client's interests, and that is  
15 obviously my primary concern.

16 I will say it again, you are caught  
17 between two substantially competing interests. The  
18 purported public interest is represented by MNR and  
19 their right to leads its case, but clear consequences  
20 of that and the way in which they are doing it will  
21 inevitably result in a substantial unfairness  
22 procedurally and substantively to those communities who  
23 are directly affected by this assessment document.

24 And if there is going to be a compromise  
25 sought in terms of attempting to deal with those



1 issues, Mr. Chairman, I believe that you have to give  
2 the benefit of the weight and the benefit of the doubt  
3 to those communities and not to the Ministry of Natural  
4 Resources.

5                   And if I can stand before you and say I  
6 am prepared to try to deal with the questions of time,  
7 to commit to a certain period of time, then I think you  
8 have to address my concerns and ask MNR whether they  
9 are prepared to do that. Because if we sit here and a  
10 year from now there is no funding and there is no  
11 participation, I don't think one has to draw too big a  
12 picture as to what that means and that will be the  
13 inevitable result. I don't think there should be any  
14 lack of clarity with respect to that issue.

15                   Let me deal very briefly, because I  
16 commend Mr. Castrilli's presentation on Mr. Cosman's  
17 motion. I can only paraphrase, the Forest Industry  
18 stands in agreement or substantial agreement, as I  
19 understand it, with MNR, they are no different as a  
20 party than we are. Mr. Castrilli has outlined that  
21 there is no statutory right of reply which should be  
22 afforded to them.

23                   Mr. Castrilli is a much more generous man  
24 than I, he has acknowledged a limited right of reply  
25 where there may be some form of a specific allegation;

1 I am not persuaded to even be that generous with  
2 respect to the Forest Industry.

3 Mr. Cosman addressed the question of not  
4 knowing what the parties want and what their concerns  
5 are and, Mr. Chairman, perhaps I can draw their  
6 attention and Ms. Murphy's attention to the same  
7 materials, and perhaps address Mr. Cosman's concerns  
8 and address the concerns that are raised in the  
9 materials provided to you by the Ministry of Natural  
10 Resources and the concern that is raised by the  
11 Ministry, if you will just bear with me, as expressed  
12 on page 2.

13 Simply put: The real problem appears to  
14 be that all parties, including the Ministry of Natural  
15 Resources, want to have a clearer understanding of the  
16 issues in dispute and proposed resolutions to them.

17 I would draw your attention, Mr.  
18 Chairman - and I don't think that I have to read all of  
19 it - firstly, to the statements made by my client, Mr.  
20 Fox, before you, and you will find those in Volume III,  
21 February 3, 1988, principally pages 263 through to 267,  
22 in which Mr. Fox indicates his commitment, the Windigo  
23 Tribal Council's commitment to participate in these  
24 hearings as fully and as fairly as possible.

25 I would then draw your attention to my

1        comments on Wednesday, May 11th, 1988 Volume II,  
2        principally at pages 215 through to 218. And I think,  
3        Mr. Chairman, we have clearly identified what our  
4        concerns are, what our issues are and how we will  
5        intend to approach this hearing.

6                    To use the new phrase, I don't think you  
7        have to be a rock scientist to understand our concerns.  
8        We are of the view that the Ministry of Natural  
9        Resources is very, very wrong. We are of the view that  
10      the identification of and discussion of substantive  
11      impacts of timber management practices on native  
12      communities and mitigation of such impacts ought to  
13      have been addressed in the Class Assessment Document  
14      and we will strive to persuade you that such concerns  
15      should be incorporated into that document.

16                   In addition, we will seek substantial  
17      changes to the Ministry's proposed planning procedures  
18      in order to enhance native involvement in the planning  
19      and to ensure a better opportunity to mitigate the  
20      negative aspects of forestry.

21                   I say that, Mr. Chairman, in the context  
22      of Mr. Fox's statement to you which is one that says:

23                   "We are not opposed to resource  
24                   development, but such that development  
25                   must benefit the native communities."

1                   We will lead evidence from traditional  
2           native community users through panels, through native  
3           leaders and environmental planners to identify the  
4           present inadequacy of the timber management planning  
5           process. I presume that MNR knows what that process  
6           is, and I presume that they are going to lead evidence  
7           about what that process is, and there ought not to be  
8           any surprises. And we will identify areas where native  
9           interests have been substantially damaged.

10                   THE CHAIRMAN: Where will these be  
11           identified, though, in terms of--

12                   MR. HUNTER: In our evidence.

13                   THE CHAIRMAN: --a notice to the other  
14           parties? In your evidence--

15                   MR. HUNTER: Yes.

16                   THE CHAIRMAN: --through your witness  
17           statements?

18                   MR. HUNTER: Yes, in rebuttal. Further,  
19           we will lead evidence to show that the proposed Class  
20           EA does not rectify the severe problems which occur on  
21           the ground. Third, evidence will be lead on the  
22           substantive impacts of timber management practices on  
23           native communities and on the environment, et cetera,  
24           et cetera.

25                   THE CHAIRMAN: You are indicating I think



1 by extension that Mr. Cosman's clients would be  
2 apprised of your client's position--

3 MR. HUNTER: Right now.

4 THE CHAIRMAN: Well, you are saying that  
5 they are apprised right now from the statements you  
6 just referred to, but those statements also indicated  
7 that you would identify--

8 MR. HUNTER: In our witness statements.

9 THE CHAIRMAN: --in your witness  
10 statements, which will come after--

11 MR. HUNTER: After we have had heard the  
12 case from MNR.

13 THE CHAIRMAN: --the Ministry and Mr.  
14 Cosman and that his remedies will be confined to  
15 cross-examination.

16 MR. HUNTER: Yes. And where, if you  
17 accept Mr. Castrilli's motion, there is some  
18 allegation. Let me address that very question because  
19 I am concerned about the wording that has been proposed  
20 by the Ministry and by Mr. Cosman.

21 "The parties in opposition indicated in  
22 their openings and through  
23 cross-examination of the leading evidence  
24 of inappropriate and environmentally  
25 unsound timber harvesting regeneration

1 practices by a number of companies."

2 We are not going to do that, we are going  
3 to be challenging the ability of MNR, through its  
4 proposed EA, as to whether or not it will encourage  
5 appropriate environmental practices.

6 I am concerned, Mr. Chairman, that our  
7 ability to address that very fundamental question in  
8 rebuttal could be dragged into by MNR and/or the Forest  
9 Industry under paragraph (a). Let me give you a very  
10 specific example.

11 We will question, we will attempt to  
12 address the adequacy of the EA Document in terms of  
13 protecting navigable and fishable waters. If we say  
14 that the timber management plan process is inadequate  
15 to deal with those issues, are we then falling within  
16 paragraph (a)? Does that mean that any witness in  
17 which one is attempting to challenge the adequacy of  
18 the Environmental Assessment Document and the role of  
19 MNR in that area falls under (a)? And I believe, Mr.  
20 Chairman, that there could be attempts to bring it  
21 under (a) and to try force other parties to identify  
22 those issues and, in the case of Forestry Industry, to  
23 require us to run our case, prepare our witness  
24 statements before the Forestry Industry has even put  
25 their case in.

1                   So I must respectfully disagree with Mr.  
2   Castrilli. I think the motion should be completely  
3   rejected, that we should not attempt to define today  
4   what would appropriately fall under (a) and that if, in  
5   the view of the Forest Industry or MNR, that any party  
6   is leading evidence which would raise a question of a  
7   wrongdoing, a breach of a regulatory requirement, then  
8   the matter can be dealt with at that time and it is  
9   within the Board's discretion, if they are of view that  
10   that is the issue which is being addressed, to give to  
11   the Forest Industry or MNR reply on that specific  
12   issue. And it should go no further than that.

13                   Let me try to deal in summary with the  
14   terms and conditions issue. As I had indicated, Mr.  
15   Chairman, I have a great deal of difficulty with the  
16   principle that says we will go into some form of  
17   scoping exercise and we will start to discuss draft  
18   terms and conditions, in other words, commit to doing  
19   that before we even know what MNR's case is, firstly.

20                   Secondly, I have a great deal of  
21   difficulty in suggesting to my client that we should be  
22   required to do that when in fact, in my opinion, it is  
23   the responsibility -- in other words, if we are going  
24   to use that exercise as a vehicle for tightening up  
25   this hearing, for trying to get rid of irrelevant

1 evidence to try to make this a manageable exercise,  
2 then we should do it now. And that MNR should be  
3 required to substantially rationalize its case before a  
4 requirement is placed upon other parties to do the same  
5 thing.

6 THE CHAIRMAN: When you say now, what do  
7 you mean by now?

8 MR. HUNTER: Today, today in the sense  
9 that MNR is ordered to produce all of its evidence, to  
10 present its case within a fixed time certain because  
11 that process in and of itself, in my estimation, will  
12 result in MNR having to rationalize its case, because  
13 they can't run in out over a nine-month period and  
14 continue to produce through oral evidence, or present  
15 through oral evidence information, opinion that will  
16 seek to augment or supplement that which has been put  
17 into their written evidence. And I can't see any other  
18 basis on which this hearing can be rationalized.

19 Thank you, Mr. Chairman.

20 THE CHAIRMAN: Thank Mr. Hunter.

21 Ladies and gentlemen, it is twenty after  
22 twelve. Who are the other parties, could they identify  
23 themselves, who will not be able to attend next  
24 Tuesday?

25 Mr. Edwards?



1                   MR. EDWARDS: Mr. Chairman, I have been  
2 instructed to relay a message from Mr. Colborne. He  
3 is away until early this afternoon and he is  
4 unavailable on Tuesday and all next week and would  
5 greatly appreciate the opportunity to be heard this  
6 afternoon. He will be back about one o'clock or  
7 shortly thereafter.

8                   THE CHAIRMAN: All right.

9                   MR. EDWARDS: I myself am unavailable on  
10 Tuesday from 11:30 to 2:30, but other than that I am  
11 available.

12                  THE CHAIRMAN: Yes. Is there somebody  
13 else over here?

14                  MR. EBBS: Yes, John Ebbs, Mr. Chairman.  
15 I would have approximately three minutes' worth of  
16 comments.

17                  THE CHAIRMAN: How about taking the three  
18 minutes right this minute.

19                  MR. EBBS: Certainly, if I may. I may  
20 not be able to speak for the parties that are not  
21 supportive...

22                  THE CHAIRMAN: Sorry, who are your  
23 clients; sir, it has been some time.

24                  MR. EBBS: Yes, I'm sorry. My name is  
25 John Ebbs, I am the Executive Director of the Ontario

1 Professional Foresters Association. My association is  
2 not represented with counsel here and, as I was saying,  
3 perhaps although I don't speak for other organizations  
4 who are not represented by counsel, perhaps I represent  
5 them in some way.

6 It is very difficult for us to follow  
7 what is going on here and it is my impression that  
8 several of these motions at least would assist the  
9 other parties, the so call part-time parties, in they  
10 themselves being able to participate some time in the  
11 future. So many of the comments that counsel have made  
12 today are quite relevant to those of us who cannot be  
13 here full time.

14 One point that I should make on behalf of  
15 the Association which is perhaps not generally  
16 understood is that our members are involved on all  
17 sides of this process. There, of course, have been  
18 members on the stand for the Ministry of Natural  
19 Resources. There are members of my Association who are  
20 providing advice and assistance to other parties on  
21 both sides, if you will.

22 My principal point, though, Mr. Chairman,  
23 Ms. Koven and Mr. Martel, is to plea for us parties who  
24 have been - if I interpreted Ms. Murphy correctly - are  
25 less interested because we don't have counsel here.

1 THE CHAIRMAN: Well, certainly not less  
2 interested in terms of being less concerned.

3 MR. EBBS: Exactly, exactly.

4 THE CHAIRMAN: The interest of the public  
5 and parties who are not represented by counsel who are  
6 not in attendance on a full-time basis is no less than  
7 any of the parties that are here or represented by  
8 counsel. I do not think Ms. Murphy meant that...

9 MR. EBBS: I totally agree, Mr. Chairman.

10 THE CHAIRMAN: Okay.

11 MS. MURPHY: Yes. My comments were  
12 meant to indicate that people represented by counsel  
13 might have higher procedural obligations, Mr. Chairman.

14 MR. EBBS: Fine, thank you. We who can  
15 not be here full time, any assistance that the Board  
16 can give by way of directions to provide information to  
17 us would be of great assistance.

18 THE CHAIRMAN: Thank you.

19 MR. EBBS: Thank you.

20 MR. BABCOCK: Mr. Chairman, Brian  
21 Babcock, Red Lake-Ear Falls Joint Municipal Committee.

22 If it is necessary for the Board's  
23 scheduling for me to attend on Tuesday, I can do so.  
24 However, my remarks would be very brief and it would be  
25 more convenient if I could be fit in some time in

1       today's schedule.

2                       THE CHAIRMAN:   How long do you propose to  
3       be?

4                       MR. BABCOCK:   Five to ten minutes.

5                       THE CHAIRMAN:   All right.   Why don't we  
6       have your presentation right now.

7                       MR. BABCOCK:   Thank you.   Generally I am  
8       in agreement with the first half of the Ministry's  
9       proposal with regards to the scheduling changes and the  
10      production of the further statements of evidence.   I  
11      have some specific comments with regard to the second  
12      half of their proposal.

13                      Firstly, with respect to the proposed  
14      terms and conditions and the production of those, I  
15      agree with the comments of Mr. Hunter that it seems to  
16      me that if the Ministry intended to impose terms and  
17      conditions that they know of as part of their case that  
18      they should properly form part of the Assessment  
19      Document and its somewhat strange for the Ministry to  
20      propose that they will do that at some late stage in  
21      their own evidence.

22                      And to shift the burden then early in the  
23      proceedings to the other parties to fix their position  
24      before they know all of the evidence will put a great  
25      unfairness on those parties.   And I would suggest that



1 if parties are required to present proposed terms and  
2 conditions, it be on a basis whereby those terms and  
3 conditions can be modified, altered and added to at a  
4 later date when all of the evidence has been heard.

5 My concern is with the word formal as used  
6 in Ms. Murphy's letter. To my mind formal is something  
7 which fixes a party's position. Mr. Castrilli used the  
8 word preliminary without prejudice, and I would submit  
9 that that's more fair to the parties who will not know  
10 all of the evidence.

11 THE CHAIRMAN: The usual practice in the  
12 Board proceedings with which I am familiar is that  
13 suggested terms and conditions are normally proposed  
14 toward the end of the proceedings, so that they can  
15 properly take into account the evidence of all of the  
16 parties and then they are put forward for the Board's  
17 consideration in the light of all of the evidence that  
18 the Board has heard, as well as the evidence that all  
19 the parties have heard.

20 MR. BABCOCK: I am in agreement that that  
21 is the usual procedure. My understanding of Ms.  
22 Murphy's proposal is that it is somewhat different from  
23 the usual procedure and my concern is that that  
24 difference would create an unfairness once the parties  
25 have the chance at the end of the normal time to revise

1 and modify their positions.

2 My understanding is that Ms. Murphy's  
3 proposal would form part of the scoping exercise which  
4 is a very valuable goal.

5 THE CHAIRMAN: That is right. It was the  
6 Board's understanding that her proposal with respect to  
7 terms and conditions may form part of the scoping  
8 exercise, so to speak, but would come in advance of the  
9 parties in opposition putting in their actual evidence.

10 And, if that were the case, then  
11 obviously they would have to encompass the idea that  
12 they could be amended or changed at a later date  
13 because the parties in opposition, I think, properly  
14 have to have before them the evidence of other parties  
15 in opposition and other interests represented at this  
16 hearing.

17 MR. BABCOCK: I believe that the Board  
18 appreciates my point. My point with respect to the  
19 paragraph dealing with specific allegations of fact is  
20 is that I have concern with the language used in that  
21 paragraph as set out in the letter on behalf of the  
22 Ministry is very general in nature and doesn't provide  
23 sufficient guidance to the other parties as to what  
24 would be encompassed by that suggested term of the  
25 Order and that if the Board is to make an order of that

1 sort, that it should be quite specific in detail as to  
2 what is considered within the compass of that  
3 provision.

4 My concern being that my client is  
5 generally in agreement with the Ministry's position on  
6 most points, however, there are points both general and  
7 specific, which we would like to have modified or at  
8 least discussed. And based on the language used in the  
9 letter, I don't know where the line was drawn.

10 My other point is with respect to the  
11 filing of witness statements and I basically reiterate  
12 the comments of the other parties that it would be  
13 unfair to the non-proponents to be required at an early  
14 stage to put in their witness statement. That's less  
15 so of a problem for my client who have been generally  
16 in agreement, will be early in the evidence procedures,  
17 however, my client's resources are extremely limited  
18 and, therefore, the agreed for time they have to their  
19 statement, the better they can consider all of the  
20 documentary evidence which we have been receiving from  
21 the Ministry.

22 I would agree with the Board's suggestion  
23 that some form of meeting between the Board and the  
24 parties to attempt to scope the hearings, once the  
25 witness panels for the Ministry were produced, would be

1 a beneficial exercise.

2 With respect to Mr. Hunter's proposal  
3 that there be an arbitrary fixed restriction on the  
4 introduction of direct evidence, that causes me some  
5 concern in that the Ministry has already structured  
6 their case around their witness panels.

7 I simply know my client hasn't and I am  
8 not aware of the development of the other parties with  
9 respect to setting up witness panels or who exactly  
10 will be testifying. And my concern would be that a  
11 limitation tied to witness panels might lead to the  
12 parties proliferating the number of witnesses and might  
13 in fact prolong direct evidence rather than shortening  
14 direct evidence where parties could call perhaps one or  
15 two witnesses to summarize what is in documentary form  
16 and that care should be taken to make sure that if an  
17 arbitrary limit is imposed, that it considers all of  
18 those possibilities.

19 THE CHAIRMAN: Well, apart from  
20 difficulties that may be caused to the Ministry by the  
21 way they have structured their witness statements,  
22 would a limitation on oral direct testimony be a  
23 problem specifically to your clients?

24 MR. BABCOCK: I don't have any  
25 instructions at this point on that because, as I say,



1 we are very early in the stage of structuring our  
2 evidence and I would doubt that it would be a problem  
3 for my client. My concern is the unfairness not so  
4 much to the Ministry but the unfairness caused to all  
5 of the parties, if another party, other than the  
6 Ministry, could take advantage of a loophole in the  
7 Board's order to get an unfair advantage in terms of  
8 presenting more direct evidence.

9 In other words, if Mr. Hunter happened to  
10 have ten witness panels and was allowed 20 days and Mr.  
11 Castrilli only had four and was restricted to eight  
12 days, that would be an arbitrary restriction that might be  
13 unfair to Mr. Castrilli.

14 THE CHAIRMAN: Well, without getting into  
15 a complete numbers game, the whole purpose of trying to  
16 limit in some rationale way the presentation of the  
17 oral direct testimony would be based on an  
18 understanding that you do not get around the Board's  
19 ruling if it should rule in that direction by just  
20 increasing the number of witnesses to be called or the  
21 number of panels to be called.

22 Presumably, the parties would be  
23 presenting the panels best able to deal with their  
24 direct evidence and would not be dealing with issues  
25 which are unnecessary to deal with in any event.

1 In any event, Mr. --

2 MR. BABCOCK: I think you appreciate my  
3 point, Mr. Chairman.

4 THE CHAIRMAN: We do appreciate your  
5 point, Mr. Babcock. All right.

6 MR. CAMPBELL: Mr. Chairman, I should  
7 advise you that I have difficulties on Tuesday as well.  
8 I am trying to arrange -- I had arranged a flight that  
9 would get me back here at -- it is supposed to come in  
10 at 4:15. You sit late on Tuesday in any any event, but  
11 cannot be here before that time and, of course, there  
12 are vagaries in the arrival times of aircraft that may  
13 cause a problem too.

14 So if it is at all possible, I would like  
15 to be heard today, if the Board is going to sit in fact  
16 on Tuesday.

17 THE CHAIRMAN: Okay. Well, I think what  
18 we will do at this point is maybe take a very brief  
19 break, three quarters of an hour for lunch.

20 All right, ladies and gentlemen, what we  
21 are suggesting is perhaps we take a brief lunch break  
22 for three quarters of an hour. I do not think you can  
23 obtain lunch in less than that period of time, at least  
24 not right around here, come back and perhaps hear from  
25 Mr. Campbell and sit as late as 2:30.

1                   Would that pose a problem to anybody here  
2       catching the flights out later this day?

3                   MR. CAMPBELL:   What about Mr. Colborne,  
4       Mr. Chairman?

5                   THE CHAIRMAN:   Mr. Colborne is not here.

6                   MR. CAMPBELL:   He is coming back for one  
7       o'clock.

8                   THE CHAIRMAN:   How long are you going to  
9       be, Mr. Campbell?

10                  MR. CAMPBELL:   I don't anticipate being  
11       more than about half an hour.

12                  MR. EDWARDS:   Mr. Chairman, I understand  
13       Mr. Colborne will be back by 1:15, so I don't see any  
14       problems. I can advise the Board that I will be  
15       certainly less than ten minutes in my submission and I  
16       would certainly appreciate the opportunity of going  
17       this afternoon.

18                  MR. HUNTER:   Mr. Chairman, we might still  
19       have time to try to sort out the scheduling for Panel  
20       6, as you identified. I would very much like to  
21       resolve that today. I am on a five o'clock flight. I  
22       don't know if Mr. Campbell...

23                  MR. CASTRILLI:   I am on a 4:15, so I  
24       don't mind sitting until 2:30.

25                  MR. CAMPBELL:   And I know there are a

1 number of counsel that have problems on Tuesday, I know  
2 I am not alone on that.

3 THE CHAIRMAN: All right. Well, why  
4 don't we just address that right now.

5 MR. CAMPBELL: I just wondered if it  
6 isn't worthwhile, in looking at the schedule and then  
7 considering whether we shouldn't continue this on  
8 Wednesday instead of Tuesday.

9 THE CHAIRMAN: Okay. Now, as the Board  
10 understands it there are several parties that cannot be  
11 present on Tuesday of the parties that are normally in  
12 attendance, and that includes who at this point?

13 MRS. KOVEN: Colbourne, Campbell...

14 MR. CAMPBELL: It includes myself.

15 THE CHAIRMAN: Mr. Hunter?

16 MR. HUNTER: That is correct, Mr.

17 Chairman.

18 THE CHAIRMAN: And Mr. Campbell.

19 MR. MANDER: Mr. Colborne.

20 MR. EDWARDS: Mr. Colborne.

21 THE CHAIRMAN: Mr. Colborne as well. And  
22 all of you gentlemen are interested in taking full part  
23 in the proceedings with respect to Panel No. 6?

24 MR. HUNTER: I have no some interest, Mr.

25 Chairman.



1 THE CHAIRMAN: I know you do, Mr. Hunter.  
2 I assume the others do as well.

3 MR. CAMPBELL: The environment affected  
4 is dear to our heart.

5 THE CHAIRMAN: All right. Well, in view  
6 of that, it really does not make much sense for the  
7 Board to sit that day.

8 Now, the other problem is, however, at  
9 the other end of the week is that Board itself have  
10 previously scheduled a Board meeting in Toronto on  
11 Friday in anticipation that we would not be sitting  
12 Friday in the normal course of events.

13 MR. FREIDIN: That day was originally  
14 scheduled as a hearing day, Mr. Chairman, because of  
15 Labour Day -- Labour Day was on the 5th, so we  
16 scheduled four days. But I can understand...

17 THE CHAIRMAN: Well, the Board's problem  
18 is we skipped a Board meeting in the summer months  
19 because of other problems with some other hearings and  
20 we sort of pushed a lot over to deal with in this one  
21 day. And, as you can appreciate, Mr. Freidin, we have  
22 members sitting on other hearings.

23 MR. FREIDIN: Maybe they should all come  
24 to Thunder Bay.

25 THE CHAIRMAN: So I think we are going to

1 have some difficulties for next Friday in terms of the  
2 Board being available. If we are having difficulties  
3 on Tuesday, that would leave Wednesday and Thursday.

4 MR. CAMPBELL: We can do a full day on  
5 Wednesday.

6 THE CHAIRMAN: Well, we could even  
7 perhaps come in Tuesday night and be able to start  
8 early on Wednesday and continue even late on Thursday  
9 and go back Friday morning. The Board could arrange, I  
10 think, to accommodate its needs by going back early  
11 Friday morning.

12 MR. HUNTER: Excuse me, Mr. Chairman,  
13 unless I have misunderstood Mr. Campbell, the Wednesday  
14 is the day that I cannot be here because of the trial,  
15 it is impossible to be here, or are you referring to  
16 the 14th, I am sorry?

17 THE CHAIRMAN: No, we are talking about  
18 next week.

19 MR. MANDER: Mr. Colborne can't be here  
20 for the entire week and I don't think you can.

21 MR. HUNTER: Well, perhaps -- I have a  
22 trial date on the 7th, I cannot get out of that.

23 THE CHAIRMAN: That's on the Wednesday.

24 MR. HUNTER: That's correct, sir.

25 THE CHAIRMAN: Okay.

1                   MR. HUNTER: The 8th may cause me a  
2                   problem. I am really concerned about this because the  
3                   case can be carried over into the 8th, the morning for  
4                   argument, and I know that the court is going to direct  
5                   that.

6                   MR. MANDER: You don't have to be here  
7                   for direct evidence.

8                   MR. HUNTER: But I am prepared to --

9                   MR. CAMPBELL: It seems to me that Mr.  
10                  Hunter doesn't have to be here for direct evidence, if  
11                  perhaps the transcript could be expedited for him,  
12                  wouldn't the solution be: Finish off the arguments on  
13                  the motion on the Wednesday morning, get as full a day  
14                  as -- to go to Panel 6 in chief, my friend Mr. Cosman  
15                  may be able to commence cross-examination if that is  
16                  reached on the Thursday, then those days are...

17                  THE CHAIRMAN: If it were reached on the  
18                  Thursday, we would all be very, very surprised if any  
19                  panel got in with one day.

20                  MR. MARTEL: It would be a miracle.

21                  MR. CAMPBELL: Well, I think, just based  
22                  on some discussions with Mr. Freidin, I don't consider  
23                  that that is impossible and then my friend Mr. Hunter  
24                  could perhaps have benefit of transcript for the direct  
25                  testimony.

1                   THE CHAIRMAN: All right. Well, it seems  
2 obvious that we are going to have to continue the  
3 discussions today over to next week. I do not think we  
4 are going to finish all submissions on the motions  
5 before us today.

6                   So why don't we at least try and set  
7 Tuesday and Wednesday -- sorry, Wednesday and Thursday  
8 for the continuation of motions and perhaps commence  
9 with the direct testimony -- commencing with the direct  
10 would not be a problem for you, Mr. Hunter, if you  
11 received the transcript, would it?

12                  MR. HUNTER: No, Mr. Chairman, I am  
13 prepared to accommodate that. The comfort I would like  
14 to get is my clear preference would be to try to  
15 commence my cross-examination on the 26th of September,  
16 therefore, for other parties that are prepared to go on  
17 the 14th. I gather you are only sitting on the 14th  
18 and the 15th; is that correct?

19                  MR. MANDER: The 16 as well.

20                  THE CHAIRMAN: 14th, 15th and 16th. Yes,  
21 we are going to have to change the schedule for that  
22 week to include the Friday.

23                  MR. HUNTER: I am prepared to commence on  
24 the 14th. If there are other parties who --

25                  MS. MURPHY: The 13th.



1                   MR. HUNTER: I understand you are sitting  
2                   on the 14th, 15th and 16th.

3                   MR. MARTEL: Yes.

4                   MR. HUNTER: If there are other parties  
5                   who could cross-examine in that period of time, it  
6                   would be of enormous help to me, Mr. Chairman, because  
7                   I have a hearing that I have to attend on the 19th.  
8                   So, therefore, being selfish about this, I would  
9                   certainly prefer trying to do my cross-ex the 26th and  
10                  27th and I will try to be no more than a day and a  
11                  half. That's my preferred choice, if I can do that.

12                  MR. CASTRILLI: Mr. Chairman, I too have  
13                  some difficulties with the month of September. I have  
14                  to be at another hearing on the 14th of September. I  
15                  wouldn't anticipate having to commence my  
16                  cross-examination next week. And shall ask if some of  
17                  the other parties who are planning to cross-examine on  
18                  Panel 6 could in fact proceed me.

19                  THE CHAIRMAN: Well, two of the major  
20                  parties, both don't want to go on the 14th.

21                  Mr. Cosman, you --

22                  MR. COSMAN: Mr. Chairman, I don't like  
23                  to display all of my own person problems before the  
24                  Board, but I am called for trial on Tuesday and called  
25                  to a hearing on Thursday next.

1                   I will have to accommodate that in some  
2 way, but what I will do is -- I am just going back to  
3 one of your original suggestions. If the Board has a  
4 meeting for Friday and Tuesday is out for most counsel,  
5 perhaps we can just finish with this motion on  
6 Tuesday -- or on Wednesday and Thursday next week and  
7 then start the following week. I mean, or start on  
8 Thursday, perhaps, if there is time.

9                   MR. CAMPBELL: Mr. Chairman --

10                  MR. FREIDIN: I don't want to confuse  
11 things, but I understand that Mr. Williams indicated he  
12 was going to be here and he wants to cross-examine.  
13 Is that right?

14                  MR. MANDER: Yes, I think he is going to  
15 take about a day, day to a day and a half.

16                  MR. FREIDIN: He said he would take a  
17 day.

18                  MR. MANDER: He could lead off --

19                  THE CHAIRMAN: All right. So then he can  
20 finish off, Mr. Williams can take up the time that we  
21 have available on--

22                  MR. CAMPBELL: Presumably his objectives  
23 are somewhat larger than that.

24                  THE CHAIRMAN: --on Thursday, if he can  
25 attend on that date to go through with his

1 cross-examination. So that will get rid of that  
2 problem and then we will commence with the other  
3 cross-examinations the following week.

4 MR. HUNTER: All I am hoping is that  
5 perhaps Mr. Colborne and Mr. Edwards could take the  
6 time on the 14th and 15th. That is really what I am  
7 trying to determine, are there other counsel who could  
8 do their cross on the 14th, 15th and 16th, and if that  
9 can be arranged then I --

10 MR. MANDER: Mr. Colborne has agreed to  
11 lead off on the 14th, but I don't know if he will take  
12 the whole week.

13 MR. HUNTER: Excuse me, Mr. Mander?

14 MR. MANDER: Mr. Colborne willing to sit  
15 and lead off on the 14th, I believe that is no problem  
16 for him, but I don't know how long he is going to be.

17 THE CHAIRMAN: And Mr. Edwards?

18 MR. EDWARDS: I will be in Toronto and I  
19 will quite possibly be unavailable the entire week of  
20 the 14th.

21 THE CHAIRMAN: Well, gentlemen, we have  
22 spent the better part of the morning trying to expedite  
23 the proceedings and that is for the future panels,  
24 scoping and whatnot and we cannot seem to get any kind  
25 of agreement whatsoever on when the parties can go.

1                   Why don't we do this: We will break for  
2 lunch and, counsel, during the lunch hour try and get  
3 together to find out which order satisfies everyone as  
4 best as possible. It may well be that we just cannot  
5 satisfy everyone and, like any other tribunal or court,  
6 we may have to press on and parties may have to do a  
7 bit of scrambling with substitute counsel or whatever,  
8 but we will endeavor to accommodate everyone we can.

9                   I do not think we want to get into the  
10 position of having to shut the proceedings down for  
11 weeks at a time because various parties can or cannot  
12 be here.

13                   Beyond that, I think we will have to wait  
14 until we return from lunch. Right after lunch, Mr.  
15 Campbell, we will - and I believe he won't be very  
16 long - deal with Mr. Colborne and then try and deal  
17 with--

18                   MR. CAMPBELL: Mr. Edwards.

19                   THE CHAIRMAN: --Mr. Edwards who said he  
20 will be only about ten minutes and then go to you.

21                   MR. COSMAN: If that completes it, Mr.  
22 Chairman, then I will finish my reply and perhaps that  
23 motion, in effect, will be disposed of or at least in  
24 terms of argument today, because I am ready to reply,  
25 if there is time.



1                   THE CHAIRMAN: Well, but the Ministry I  
2     imagine wants to say something on all of this. So I am  
3     not sure we will not have to deal with it next  
4     Wednesday in any event.

5                   All right. Let's adjourn until no later  
6     than 1:30.

7     ---Luncheon recess at 12:45 p.m.

8     ---Upon resuming at 1:30 p.m.

9                   THE CHAIRMAN: Thank you. Be seated,  
10    please.

11                   Ladies and gentlemen, I understand that  
12    over the lunch hour there were consultations between  
13    Mr. Mander and the parties and we have worked out some  
14    kind of acceptable schedule for next week; is that the  
15    case?

16                   Where is Mr. Mander, he is not...

17                   MS. MURPHY: He was working over lunch  
18    hour.

19                   THE CHAIRMAN: Okay. Is anyone aware of  
20    those arrangements, other than what we have heard sort  
21    of through the grapevine?

22                   MR. CAMPBELL: I could try and outline  
23    them, Mr. Chairman.

24                   THE CHAIRMAN: Would you, please.

25                   MR. CAMPBELL: My recollection of them is

1       that -- my understanding is that it...

2                   MS. MURPHY:   Here comes Mr. Mander.

3                   MR. CAMPBELL:  --that it was contemplated  
4       that MNR would call its Panel 6 evidence commencing  
5       September 6th which is the Tuesday.  The unavailability  
6       of counsel for the most part applies all week, I am the  
7       only one who can't be here on the 6th and, if we have  
8       an expedited transcript, in fact, for my purpose I am  
9       not even sure that under those circumstances an  
10      expedited transcript is required because my  
11      cross-examination isn't going to be for some  
12      considerable period.

13                   In any event, Panel 6 could go on the  
14      6th.  The motion would be completed, argument on the  
15      motion that is outstanding would be completed on the  
16      7th, and again if the only matter outstanding on the  
17      motion turned out to be Ms. Murphy's reply, if it was  
18      more convenient to do it on the 6th when I wasn't here,  
19      that would be -- I would take no objection to that.

20                   So I basically leave that to MNR as to  
21      which way they wish to proceed and the Board.  I  
22      certainly would take no objection to that reply being  
23      made in my absence.

24                   THE CHAIRMAN:  Well, if they managed to  
25      put in the direct on one panel completely and do reply

1 all in one day--

2 MR. FREIDIN: That we won't do.

3 THE CHAIRMAN: --I would be very  
4 surprised.

5 MR. CAMPBELL: And, as I understand it  
6 then, the order of cross-examination whenever Panel 6  
7 finishes...

8 THE CHAIRMAN: We have Mr. Williams to  
9 cross-examine I believe on a previous panel.

10 MR. CAMPBELL: Yes.

11 THE CHAIRMAN: Mr. Mander, was Mr.  
12 Williams going to be wanting to cross-examine on a  
13 previous panel, or are we just talking Panel 6 here?

14 MR. MANNING: We are just talking Panel  
15 6, I think.

16 THE CHAIRMAN: Okay.

17 MR. MANDER: He didn't mention anything  
18 to me about previous panels.

19 THE CHAIRMAN: Very well.

20 MR. CAMPBELL: All right. So as I  
21 understand it then, as soon as the Panel 6  
22 evidence-in-chief was done, the order would be  
23 cross-examination by the OFIA, then NOTO, Mr. Edwards.

24 MR. MANNING: No, he can't go until later  
25 now.

1                   MR. CAMPBELL: Oh, I am sorry. Well, I  
2 better use the revised edition.

3                   MR. MANDER: Use that white sheet.

4                   MR. CAMPBELL: The Ontario Forest  
5 Industries Association, then the Ontario Federation of  
6 Anglers & Hunters, there is the possibility then of  
7 some cross-examination on behalf of the Ontario Metis  
8 and Aboriginal Association, that is not a confirmed  
9 time. It is expected that by that time we would have  
10 been past -- we would be past the 8th, so that Mr.  
11 Colborne on behalf of Grand Council Treaty No. 3 could  
12 be expected to be reached in the hearing days that  
13 start the 14th and extend to the 16th.

14                   Following that that would be Mr.  
15 Castrilli's cross-examination on behalf of Forests for  
16 Tomorrow. Then in an order that could be worked out  
17 according to the vagaries at the moment, it would be  
18 the Northern Ontario Tourist Outfitter's Association,  
19 or Mr. Hunter, and we would expect by that time to be  
20 around the 26th. So that Mr. Hunter's wish to commence  
21 on the 26th could be accommodated.

22                   And then ourselves and then  
23 re-examination, and it is anticipated that that would  
24 largely use up the dates available to the 29th of  
25 September.



1 THE CHAIRMAN: All right.

2 MR. CAMPBELL: But I think that is the  
3 order. The only question I had with the three hearing  
4 days on the 14th, 15th and 16th is: Would the Board  
5 intend to -- on the 14th, for instance, would it like  
6 people up on the evening of the 13th so as to get in a  
7 full day on the 14th and then leave -- or just have the  
8 regular start and finish days on the 14th?

9 THE CHAIRMAN: I think for the week  
10 probably the regular times.

11 MR. CAMPBELL: So it would be one o'clock  
12 on the 14th.

13 THE CHAIRMAN: Right.

14 MR. CAMPBELL: And conclude around 2:30  
15 on the 16th.

16 THE CHAIRMAN: Right. And that would  
17 probably accommodate those cross-examinations.

18 MR. CAMPBELL: Unless I have totally  
19 messed it up, I think those are roughly the  
20 arrangements that people are comfortable with.

21 MR. FREIDIN: Starting on the 7th then at  
22 what time?

23 MR. CAMPBELL: The 6th.

24 THE CHAIRMAN: That is 6th.

25 MR. FREIDIN: I mean the 6th, I am sorry?

1 THE CHAIRMAN: I think we should start at  
2 one, because I think it would be unfair, since it is  
3 along weekend, for people to be required to come up the  
4 night before. Some people will be away otherwise.

5 MS. MURPHY: Just one question. I  
6 wonder -- I mean, because of the time it looks very  
7 much that we won't get much farther than perhaps the  
8 next couple of counsel and is there a good reason that  
9 I missed for not finishing the motion on the Tuesday  
10 when we reconvene and just finish it off before --

11 MR. COSMAN: Before Panel 6, because that  
12 would enable me to reply because I won't be here on the  
13 7 th.

14 In other words, we start it off rather  
15 than put it off until the end of the day and just  
16 continue and finish it.

17 MS. MURPHY: Right.

18 THE CHAIRMAN: Well, there is no  
19 objection to the Board doing it that way if it  
20 accomodates counsel in the above manner.

21 MR. CAMPBELL: I am the only one that is  
22 causing the problem it seems to me on this, Mr.  
23 Chairman, and if it were simply limited to -- I thought  
24 I made it clear, if it was simply limited to Ms.  
25 Murphy's reply, I have no problem and, in fact, I

1 gather Mr. Cosman is not going to be...

2 MR. COSMAN: I won't be long. No, I am  
3 just replying to the position.

4 MR. CAMPBELL: He hasn't heard me yet  
5 mind you, but he doesn't anticipate being terribly long  
6 in reply and under those circumstances I am willing to  
7 to rely on the excellent assistance of my friend Mr.  
8 Sutterfield in this regard.

9 THE CHAIRMAN: Okay. And that presumes  
10 that you are going to finish today with your  
11 submissions?

12 MR. CAMPBELL: That presumes that, yes.

13 MS. MURPHY: I think, there two people  
14 left to go today?

15 THE CHAIRMAN: There is Mr. Colborne and  
16 there is Mr. Edwards.

17 MS. MURPHY: Oh, well.

18 THE CHAIRMAN: And then Mr. Campbell,  
19 so...

20 MS. MURPHY: Maybe we should worry about  
21 it later.

22 MR. TAYLOR: Mr. Chairman, I would also  
23 like an opportunity to make a brief statement. Don  
24 Taylor representing the Northern Ontario Associated  
25 Chambers of Commerce.

1 THE CHAIRMAN: All right, Mr. Taylor. So  
2 I am not sure that we are going to finish you today and  
3 if we don't, then I suppose we go back to the Wednesday  
4 scenario.

5 MR. CAMPBELL: I would appreciate that,  
6 Mr. Chairman.

7 THE CHAIRMAN: You will live with that,  
8 Mr. Cosman?

9 MR. COSMAN: I will live with whatever  
10 the Board orders, Mr. Chairman.

11 THE CHAIRMAN: Okay. All right. So for  
12 the purposes of scheduling, we will return here next  
13 Tuesday with the hearing to commence at one in the  
14 afternoon and we will be sitting through until probably  
15 late Thursday, with people being - if necessary, to  
16 complete the evidence that we want in that week - with  
17 people going back either late at night or the first  
18 thing in the morning.

19 Okay. So that will be the scheduling  
20 for the present. And on that basis we will be putting  
21 the announcements that we normally put on our 1-800  
22 number for the benefit of parties who call as to what  
23 is happening.

24 Very well. Let's proceed, Mr. Colborne.

25 MR. COLBORNE: Mr. Chairman, with your



1 permission, Mr. Edwards wants to go first.

2 THE CHAIRMAN: Very well. Mr. Edwards?

3 MR. EDWARDS: Mr. Chairman, I am going to  
4 be extremely brief. I would start by adopting much of  
5 the legal argument that Mr. Castrilli made and then I  
6 will move on and just make what I think are some  
7 practical observations.

8 Mr. Cosman, in his remarks was concerned  
9 about the definition of the opposition to the proposal.  
10 He said he had no idea of what he is opposing. I think  
11 part of the difficulty that everybody faces in this  
12 proceeding is caused by Section 48 of the Regulation  
13 which requires us to identify ourselves as either  
14 parties in support or parties in opposition to the  
15 proposal. We are sort of pigeon-holed that way.

16 THE CHAIRMAN: Well, it should not cause  
17 you a problem because in identifying yourself as such  
18 the Board only expects at the point in time when we are  
19 trying to set up the procedural order of addressing the  
20 Board in terms of presenting the evidence in  
21 cross-examination, some indication as to which side of  
22 the fence you are on, if indeed you are on one  
23 particular side of the fence, I mean fully recognized  
24 in this hearing, that parties are in support of certain  
25 aspects of the Ministry's position and in opposition to

1 others.

2 MR. EDWARDS: That is exactly my point,  
3 Mr. Chairman. I don't think it is quite a situation  
4 where one is in opposition or not in opposition. And I  
5 think that for a request to be made that we have to  
6 identify what we're opposing or what we are not  
7 opposing, I think in the context of the hearing it  
8 makes it a little difficult.

9 And I think the submission on behalf of  
10 the OFIA is really made in that context, that we are  
11 obligated to produce everything which would suggest  
12 that we are in opposition to and to specify it at an  
13 early date. It is my submission on behalf of my client  
14 that the proposal of the MNR as made in response to the  
15 two motions is largely acceptable as a solution,  
16 however, the last suggestion; that is to say, the  
17 suggestion on page 3 that any person who intends to  
18 make specific allegations of fact, et cetera, is one  
19 which is not necessarily and indeed is unfair.

20 At first blush the concerns of the OFIA  
21 appear understandable, they want to know the case that  
22 they have to meet. However, it is my submission that  
23 the hardship is more imagined than real and any  
24 hardship could be minimized and that the proposal that  
25 I would have for minimizing is exactly the one that Mr.

1       Castrilli advanced; that is to say, a limited right of  
2       reply. I don't see anything wrong in allowing that to  
3       the OFIA; if a specific allegation is made about a  
4       specific date or a specific company, I think they ought  
5       to have that right.

6                       However, the OFIA proposal, as adopted in  
7       part by the Ministry, I think goes beyond what is  
8       required to be procedurally fair. The OFIA knows that  
9       some of the parties intend to adduce some evidence of  
10      inappropriate or environmentally unsound timber  
11      management practices. Indeed, I would be somewhat  
12      surprised if the OFIA itself did not intend to adduce  
13      some evidence to that effect, really to -- as an  
14      example to show how it is attempting to self-regulate  
15      and that it has some capacity for self-criticism.

16                      I think it would come as no surprise that  
17      the Northern Ontario Tourist Outfitters would wish to  
18      adduce some evidence that certain timber management  
19      practices have accessed resource lakes which were  
20      previously valuable tourism resources and have  
21      negatively impacted upon them.

22                      Very much of the specific examples which  
23      NOTO might reply upon would relate to the issue of  
24      monitoring; that is to say, we are not suggesting that  
25      nobody should cut a tree, or that nobody should build a

1 road, but it has to do with sensitive planning and  
2 really monitoring after the fact. And that I think is  
3 something that would deal with the way the MNR operates  
4 in its monitoring process which will be dealt with, I  
5 understand, in Panel 15.

6 The evidence will necessarily be  
7 anecdotal and whether we introduce 5 or 50 or 500  
8 anecdotes, I don't think that any number will establish  
9 to everybody's satisfaction that the system is so  
10 flawed that it ought to be thrown out, that it is  
11 totally out of control.

12 That conclusion would always be based  
13 upon partial and incomplete data and nobody  
14 realistically expects that that is going to happen.  
15 However, the use of the anecdotes is, I think, a  
16 reasonable one in the sense that it allows a  
17 highlighting of the flaws in the existing system so as  
18 to improve the final result.

19 Now, a requirement to produce the  
20 specific 5 or 50 or 500 incidents in advance would be a  
21 hardship for a number of reasons. If specific  
22 examples are selected they would necessarily be most  
23 appropriate if they were in response to the case which  
24 has been presented; that is to say, we are indeed  
25 responding to a case, not removing our supporting party



1       and I think, firstly, for any useful purpose the best  
2       examples are ones that respond.

3                       If five were identified well in advance  
4       and in advance of the OFIA case and it was determined  
5       that some other ones were perhaps more appropriate or  
6       better examples at a later date, at that stage we would  
7       then be subject to criticism: Why didn't you produce  
8       this earlier, why are you now sneaking this in or  
9       catching us by surprise.

10                      That type of criticism where it might  
11       be -- if their motion was allowed, would perhaps be a  
12       legitimate criticism and those examples would be given  
13       less probative value and it would be my submission that  
14       that would be an unfair result. We are obligated to  
15       produce witness statements and I don't believe that  
16       there is any need to change that obligation at this  
17       time. It is particularly unfair to parties with  
18       limited resources.

19                      I notice that Ms. Murphy's remarks were  
20       addressed to those in full-time attendance. Now, I am  
21       not quite sure where we fit under that heading. We  
22       certainly haven't been in full-time attendance for  
23       obvious reasons, although we are in receipt of  
24       full-time correspondence. We do not have, obviously,  
25       the resources for a full-time researcher. Information

1 tends to come into our organization rather  
2 sporadically. It can come in, as an example of  
3 something that occurred last week, but indeed something  
4 can come in this week of something that occurred three  
5 years ago and if it happens to be an appropriate  
6 example, I don't think the organization should be  
7 criticized for drawing it to the attention of the Board  
8 as an example of the type of problem that can exist.

9               So I think it would be unfair to be  
10 required to set out the examples so far in advance  
11 without an opportunity to hear the evidence of the  
12 moving party and indeed the evidence of those in  
13 support.

14               To relieve this prejudice, which I don't  
15 believe would be a great prejudice in any event, I  
16 think a limited right of reply would clearly allow that  
17 and I would be in support of that. And with respect to  
18 specific examples of, for example, if somebody were to  
19 adduce evidence that a bulldozer crushed a tourist  
20 outfitter's operation and seven tourist outfitters, I  
21 suppose on a particular day, I am sure Mr. Cosman would  
22 be entitled to adduce evidence that it was fewer than  
23 seven tourist outfitters that were crushed, or  
24 whatever --

25               MR. FREIDIN: He would have heard about

1       that one, I am sure.

2                       MR. EDWARDS: I'm sure he would have  
3       heard of that one. I do think that specific examples,  
4       if they are untrue or incorrect obviously should be  
5       corrected by an appropriate limited reply.

6                       With respect to page 3 of the MNR  
7       proposal. There is a lot in this proposal which  
8       commends itself to the Tourist Outfitters Organization.  
9       However, there are a couple of practical difficulties.  
10      The item at the penultimate paragraph beginning with:

11                      "In a specific time thereafter to be  
12                       fixed by the EA Board. All other  
13                       parties who intend to propose terms and  
14                       conditions would be required to file a  
15                       formal statement."

16                      I note that the obligation on the MNR  
17      would appear to be a concise summary of the decision  
18      which the MNR is seeking and I don't know if there is  
19      any meaning or magic to the words that are chosen, but  
20      I think that the obligation should be similar if we are  
21      obligated to provide a formal statement, clearly so  
22      should the MNR. I think a concise summary is perhaps  
23      more of what everybody is looking for and, indeed, NOTO  
24      approves of the idea of all parties trying to be fairly  
25      up front as to what we are trying to get the Board to

1 do, because I think that will help tremendously.

2 THE CHAIRMAN: At which time would your  
3 clients want to do that?

4 MR. EDWARDS: Well, I have I guess two  
5 submissions on that. It is my view that if the MNR was  
6 required to produce this concise summary shortly, it  
7 would greatly focus the issues that are before the  
8 Board and, indeed, would result in a scoping function  
9 of some significance.

10 And it is my view that the MNR ought to  
11 be able to do that, although I understand from speaking  
12 to counsel that they believe some practical -- great  
13 practical difficulties lie in doing that, but one would  
14 hope that they would have some idea of what they want  
15 the Board to order and I think this would greatly  
16 impact on our ability to respond at an early stage and  
17 would have a very significant help in scoping.

18 If that is not to be ordered, the  
19 proposal that Ministry produce it after Panel 15 and  
20 then some time thereafter the responding parties  
21 including NOTO would be obligated to produce a similar  
22 document, we would find a particular difficulty in  
23 having a short time frame there because Panels 14 and  
24 15 are the whole ballgame practically from my client's  
25 point of view. That is to say, access and monitoring



1 are the two things that are of the greatest  
2 significance.

3 So that some of the latter panels are the  
4 ones that we would obviously have to deal with most  
5 carefully, and since we are getting them relatively  
6 late in the game, it might be some hardship to provide  
7 the terms and conditions of our proposed approval  
8 without some reasonable timing.

9 Indeed I guess the final submission I  
10 have is that there is a specific opposition to the  
11 requirement to intend or requirement to provide  
12 specific allegations of fact in advance. I just don't  
13 think that that is, in my respectful submission,  
14 necessary in terms of natural justice or required by  
15 statute or common law.

16 Those are my submissions on the point,  
17 Mr. Chairman.

18 I do note that Mr. Williams asked that I  
19 read into the record his letter. I would invite the  
20 Board to direct the Reporter to treat it as read in and  
21 that may save some time.

22 THE CHAIRMAN: All right. Would you note  
23 that in the transcript, Reporter. I think that will  
24 save some time if Mr. Williams letter dated August 31,  
25 1988 is considered to have been read into the record.

1                   And the same for the Northwatch one and  
2       that is a letter also dated August 31st, 1988 from  
3       Northwatch.

4 PRESENTATION

5 Ontario Federation of Anglers & Hunters

6 Dear Mr. Chairman and members:

7 Subject: Class Environmental Assessment of the

8           Undertaking of Timber Management on Crown Lands

9 I regret that financial constraints on  
10 our Federation prevent me from being in Thunder Bay on  
11 September 1 to speak to the two motions and the  
12 proponent's proposal that deal with very substantive  
13 procedural issues, and other fundamentally important  
14 matters.

15                   However, while I am not able to be present  
16       in person to state the Federation's position on these  
17       matters, and will be without the benefit of hearing  
18       argument by all parties, the Federation submits  
19       herewith in summary fashion its position on these  
20       issues.

21 I ask that this letter be introduced into  
22 evidence as a matter of record.

23           A.   Notice of Motion filed by Forests for Tomorrow

24           1.           The Federation supports and agrees in  
25           principle with the grounds for the motion as set out in

1 clauses (a) (b) and (c) thereof.

2 2. The Federation supports that portion of  
3 motion (a) varied as necessary to read as follows:

4 "an order requiring that following the  
5 completion of the hearing of Panel VII  
6 evidence of the proponent, the Board  
7 adjourn the hearing to February 1, 1989  
8 with a direction to the proponent to serve  
9 and file all outstanding witness  
10 statements, studies and reports prior to  
11 said date."

12 3. The Federation supports motion (b)  
13 seeking an amendment to the Board's procedural  
14 directive concerning the time for filing  
15 interrogatories given that the volume of material  
16 associated with the proponent's statements of evidence  
17 and supporting documentation of the proponent does not  
18 allow adequate time to review and research the material  
19 and prepare interrogatories within the presently  
20 imposed time limitations.

21 B. Notice of Motion of Ontario Forest Industries  
22 Association and Ontario Timber Manufacturers  
23 Association

24 1. The Federation supports and agrees in  
25 principle with the grounds for the motion as set out in

1 clauses (a) (b) (c) and (d) thereof on the assumption  
2 that lines 1 and 2 of clause (d) are intended to read  
3 as follows:

4 "(d) the delivery of witness statements  
5 by all parties making allegations of  
6 inappropriate and environmentally unsound  
7 timber harvesting and regeneration  
8 practices by member companies after  
9 completion of the case of the proponent,  
10 and before commencement of the hearing  
11 of the evidence of the OFIA/OLMA, will  
12 serve the purpose:"

13 2. While the Federation agrees in principle  
14 with the intent of the motion, provided it is limited  
15 to parties making the allegations about which they, the  
16 O.F.I.A., is concerned, it does not support the  
17 arbitrary time constraint embodied in the motion. The  
18 Federation supports the alternative approach being  
19 proposed by the proponent as the appropriate mechanism  
20 for accomplishing the expressed purpose of the motion.

21 C. Proposal Letter of Ministry of Natural Resources  
22 by their Solicitors dated August 26, 1988

23 1. The Federation agrees with and supports  
24 implementation of the timetable of events set out in  
25 the last paragraph on page 2 of said letter and



1 concluding with the reference on page 3 to the  
2 reconvening of the hearing on February 1 for the  
3 purposes as stated.

4 2. While the Federation considers all of the  
5 forgoing matters of a procedural nature of great  
6 importance to the hearing process, the Federation is of  
7 the opinion that they only address the symptoms of a  
8 problem. To date, it has been inherently unfair and  
9 prejudicial to the parties to the hearing to be  
10 cross-examining on statements of evidence of the  
11 proponent and to be attempting to prepare their own  
12 witness panel without having a concise summary of the  
13 decision which the Ministry of Natural Resources is  
14 seeking from the Environmental Assessment Board in this  
15 matter including proposed terms and conditions.

16 For this reason, the Federation was in  
17 the process of preparing a notice of motion, which was  
18 to seek such an order from the Board. Accordingly, the  
19 Federation supports the initiative of the proponent on  
20 this matter as set out on page 3 of its letter, which  
21 we consider central to the whole hearing process.

22 We also agree that any such requirement  
23 imposed on the proponent by the Board dictate that same  
24 be complied with prior to completion of the Ministry's  
25 case and more particularly, by a specific date within

1       that time frame to be fixed by the Board. The  
2       Federation feels strongly that said fixed date be no  
3       later than at the conclusion of hearing of evidence on  
4       Panel VIII.

5                   The Federation concurs with the  
6       proponents contention that the obligation be reciprocal  
7       with the other parties including the fixing of an  
8       appropriate date by the Board provided that date would  
9       be a reasonable period of time following completion of  
10      the Ministry's case rather than prior to completion of  
11      the Ministry's case as proposed by the proponent.

12                   The Federation agrees that the same  
13      arrangements as modified above, should apply to persons  
14      who intend to make specific allegations of fact which  
15      are intended to show inappropriate and environmentally  
16      unsound timber management practices by a person.

17                   The Federation also agrees that all  
18      full-time parties should be required to file their  
19      witness statements within a specified period of time,  
20      but following completion of the proponents case.

21                   I trust our comments are of assistance to  
22      the Board in addressing these issues.

23                   Yours, truly, J.R. Williams, Q.C.,  
24                   Legal Counsel.

25                   (Ontario Federation of Anglers & Hunters)

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PRESENTATION

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Northwatch

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Re: Class Environmental Assessment of the Undertaking  
of Timber Management on Crown Lands in Ontario as  
administered by the Ministry of Natural Resources

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NOTICES OF MOTION TO BE HEARD SEPTEMBER 1, 1988

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With respect to the motion put forward by Forests for  
Tomorrow for requirement of adjournment of the Hearing  
following the hearing of Panel VII evidence until  
February 1, and the filing of all witness statements,  
studies and reports of the proponent no later than  
sixty days prior to recommencement, and for requirement  
for an amendment to the Board's procedural directive  
requiring that interrogatories be filed no earlier than  
forty days before a witness panel of the proponent is  
to commence examination, Northwatch would like to speak  
in support of the motion on the basis of:

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- 1) it being within the rights of all  
parties to have the full evidence of the  
proponent known, in accordance with the  
Environmental Assessment Act and Regulations,  
in order to address the components of that  
case within the larger context of all  
evidence to be presented.

1                   2)    it being a disadvantage to all parties  
2                   to be required to address evidence from the  
3                   proponent in a segmented fashion.

4                   With respect to the motion put forward by  
5                   the Ontario Forest Industries Association and the  
6                   Ontario Lumber Manufacturers Association for  
7                   requirement of all parties intending to file witness  
8                   statements to do so within sixty days of the completion  
9                   of the hearing of the evidence of the proponent and  
10                  before the commencement of the hearing of the evidence  
11                  of the OFIA/OLMA, Northwatch would like to speak in  
12                  opposition of the motion on the basis of:

13                 1)    it being unfair in practice to  
14                 require all parties to file in advance of  
15                 the presentation of OFIA/OLMA

16                 2)    the grounds for the motion being unsound  
17                 in that it is Northwatch's understanding that  
18                 the function of statements of evidence and  
19                 subsequent presentation is to put forward the  
20                 information deemed by the proponent and by  
21                 each party to be necessary to the decision  
22                 making of the Board, and the function of  
23                 cross-examination being to respond to  
24                 "allegations" by other parties, rather than  
25                 the presentation of evidence being the



1 occasion for "responding", as identified by  
2 counsel for OFIA/OLMA in their stated grounds  
3 for the motion.

4 In our absence from the Hearing Room of  
5 the Ramada Prince Arthur Hotel, 17 North Cumberland  
6 Street, Thunder Bay, Ontario, on the occasion of the  
7 hearing of the above motions Thursday, September 1,  
8 1988 at 8:30 a.m., or as soon after that time as the  
9 motion can be heard, Northwatch is requesting the above  
10 statements of position relative to the motions be read  
11 into the records, and given the consideration of the  
12 Hearing Panel.

13 Sincerely,

14 Brennain Lloyd,

15 Northwatch Group Liaison

16 MR. EDWARDS: Thank you, Mr. Chairman.

17 THE CHAIRMAN: Mr. Edwards, just before  
18 you leave I want to ask you a similar question, and  
19 that is: What is your client's position with respect to  
20 any attempt to limit oral direct testimony to a  
21 specified time?

22 MR. EDWARDS: Along the lines of Mr.  
23 Hunter's suggestion. I would want to get some  
24 instructions on that, Mr. Chairman. The question was  
25 put somewhat -- similar question was put a while ago

1       and my instructions at that time were that that would  
2       not be an appropriate idea.

3                   THE CHAIRMAN:   Would not be...?

4                   MR. EDWARDS:   Appropriate.   The  
5       limitation on the direct evidence would not be  
6       appropriate.   I would want to get -- I can review it  
7       once again with my client and advise the Board in due  
8       course of its position.

9                   THE CHAIRMAN:   Very well.

10                  MR. EDWARDS:   Thank you.   Those are my  
11       submissions.

12                  THE CHAIRMAN:   Thank you.

13                  Mr. Colborne?

14                  MR. COLBORNE:   Mr. Chairman, the position  
15       of my client in regard to the motions and the proposal  
16       from Ministry of Natural Resources is that we are  
17       generally in support of the thrust of the Forests for  
18       Tomorrow motion and the aspects of the MNR proposal or  
19       compromise which have to do with what Mr. Castrilli has  
20       brought forward.

21                  I say, though, generally in support of  
22       the thrust, because my clients, I believe, are in a  
23       somewhat special situation here, the reason being that  
24       Panel 6 is the panel which has been identified to us  
25       and which it would appear from any reading of what has

1       been furnished so far by the proponent as being that  
2       panel where our concerns will primarily be dealt with.

3                       Now, the suggestion before the Board at  
4       this time is that that panel will be heard from and  
5       concluded before the, let's call it the break, in the  
6       proceedings during which the Ministry of Natural  
7       Resources will complete it's preparation of witness  
8       statements and so on.

9                       Now, we agree that the Assessment before  
10      the Board is essentially incomplete. It is  
11      unfortunate, I don't know if it could have been done  
12      differently, but it is in fact incomplete and that has  
13      led to a great deal of clumsiness on the part of  
14      certainly part-time parties like my client where it has  
15      created a clumsy situation because of the necessity of  
16      trying to guess when we should be focusing our concerns  
17      on resources.

18                      So far we have tried to do that, and if  
19      the hearing proceeds without any changes, if the  
20      motions that are before you do not result in a  
21      procedural change, then we would have to continue with  
22      that somewhat clumsy process, but we could probably  
23      accommodate ourselves to it if we had to because that  
24      is what we have become accustomed to.

25                      However, if now it will emerge that the

1 entire proponent's case, at least in terms of witness  
2 statements, will be available in a package and we will  
3 then, therefore, have a proper opportunity or a full  
4 opportunity to assess what parts of it we are concerned  
5 with, we may discover - and I expect we will - that  
6 there are numerous points that ought to have been  
7 canvassed with, as it were, our Panel 6. The one and  
8 only panel, as I understand it, that is going to be  
9 dealing with the rights of treaty Indians.

10 So my submission is that if an adjustment  
11 of the type that is being proposed is in fact adopted,  
12 that this particular special concern that I pointed out  
13 be accommodated and an idea I have is perhaps simply a  
14 proviso in the order saying that that Panel 6, on  
15 request, can be back in the stand or perhaps any of the  
16 panels already dealt with on request.

17 THE CHAIRMAN: So, in effect, another  
18 limited form of reply?

19 MR. COLBORNE: Not reply, no.

20 THE CHAIRMAN: Well, the ability to  
21 recall the panel, is that what you are...

22 MR. COLBORNE: Yes and I don't raise this  
23 as a point of marginal concern, I want to stress that  
24 this is a point of very major concern to us. If some  
25 accommodation of this kind cannot be identified, then I



1 would suggest that we, as a party, are not being dealt  
2 with in any manner comparable to or equal to the way  
3 that other parties are being dealt with.

4 Mr. Edwards, for example pointed out that  
5 the concerns of his clients focus on two late panels.  
6 The concerns of my clients focus on one early panel and  
7 if the early panels have been dealt with in the way  
8 they have been, and the late panels are dealt with with  
9 all the witness statements available beforehand, then I  
10 suggest that we have an imbalance here.

11 THE CHAIRMAN: Let me get this straight.  
12 Let me get your proposal straight. You will have had  
13 the opportunity to cross-examine Panel 6. Panel 6 will  
14 put forth its evidence in direct, you will  
15 cross-examine--

16 MR. COLBORNE: Right.

17 THE CHAIRMAN: --with whatever concerns  
18 you have over that evidence. If, when later panels are  
19 called by the Ministry they also deal with native  
20 issues of concerns to your client, you would have the  
21 opportunity to cross-examine at that point in time.

22 MR. COLBORNE: That's right.

23 THE CHAIRMAN: Those later panels. And  
24 is what you are suggesting that you would want the  
25 original Panel 6 recalled so that you could direct

1 further cross-examination at them resulting from what  
2 happened later on.

3 I am not quite following you, exactly  
4 what you want.

5 MR. COLBORNE: I suggest that it would  
6 be possible in fact probable that certain questions  
7 which would be asked of any or all witnesses following  
8 Panel 6 will result in the following reply: I know  
9 nothing about that, I know nothing about that.

10 So we could get to the end of the hearing  
11 and there will be topics which are relevant but the  
12 stand will not have contained a witness who can spoke  
13 to them since Panel 6 and it was impossible to identify  
14 that ahead of time because I had not known until after  
15 Panel 6 was finished exactly where the proponent is  
16 slotting in all of its evidence.

17 THE CHAIRMAN: Could the Ministry advise  
18 whether the members of Panel 6 are proposing to be  
19 recalled as members of any subsequent panel?

20 MS. MURPHY: The members of Panel 6 at  
21 this present time wouldn't be recalled as witnesses on  
22 a later panel.

23 MR. COLBORNE: I wish to point out  
24 that...

25 THE CHAIRMAN: Well, would you be

1 content, Mr. Colborne, if something like that arose  
2 down the road, because of the way Panel 6 was handled,  
3 which pre-dates in time our consideration of the issues  
4 before us today, if there is going to be a change in  
5 the procedural rulings, of just addressing it at the  
6 appropriate time and indicating that there is no panel  
7 dealing with native issues down the road -- sorry,  
8 there are panels dealing with native issues down the  
9 road that would have caused you to ask certain  
10 questions to Panel 6 in cross-examination when they  
11 appeared and, therefore, you would like Panel 6  
12 recalled to answer those questions and deal with it on  
13 an ad hoc basis.

14 I mean, if you persuade the Board that  
15 there is some kind of unfairness that was perpetrated  
16 as a result, I think the Board would be very  
17 sympathetic to that argument, because the Board is not  
18 prepared to visit any unfairness on any party, to the  
19 extent it can prevent it, as a result of the procedural  
20 matters and issues that we are dealing with.

21 MR. COLBORNE: Well, just to answer your  
22 question, Mr. Chairman. The answer is, of course, yes,  
23 I am satisfied if it is dealt with properly when it  
24 arises, but I certainly want to raise it with you  
25 because I expect it is going to arise.

1                   I have, in my written interrogatories,  
2                   submitted numerous questions to witnesses, most of  
3                   which were referred to the magical Panel 6 which was  
4                   supposed to be able to answer all my questions. Now,  
5                   we are still awaiting whether they will or will not,  
6                   but that is the panel I have been referred to. And now  
7                   I am in the situation where I have to deal with Panel 6  
8                   before I know what the entire proponent's case is. And  
9                   this gives rise to all the points I think that Mr.  
10                  Cosman raised in support of his position, he doesn't  
11                  want to be dealing with the central points.

12                 THE CHAIRMAN: But is it not the case  
13                  that either the points will be dealt with by Panel 6 or  
14                  they will not? If they are not dealt with by Panel 6  
15                  they may be dealt with by a subsequent panel or they  
16                  may not be dealt with at all, in which case you will be  
17                  calling your own evidence, I presume at some point, to  
18                  put on the record your client's position.

19                 MR. COLBORNE: Yes, they either will or  
20                  they will not. The problem is, I don't know because I  
21                  don't know what the subsequent panels are going to deal  
22                  with except in a very, very rough outline.

23                 THE CHAIRMAN: Well, there should be a  
24                  response to the interrogatories, should there not? Is  
25                  not the Ministry responding to your interrogatories?



1 MR. COLBORNE: Mostly by referring me to  
2 Panel 6.

3 THE CHAIRMAN: Well then, presumably they  
4 are going to deal with it in Panel 6.

5 MR. COLBORNE: That has to do with  
6 interrogatories for the early panels but I, of course,  
7 can't submit interrogatories with respect to Panel 15  
8 now, I don't even know what Panel 15 is going to be  
9 saying.

10 With respect to the question really of - I  
11 will define it as some departure from the usual rules  
12 in terms of when things will be filed - that is, I  
13 suppose, Mr. Cosman's motion. My position on that is  
14 that I submit that there is no reason to depart from  
15 the basic structure which is in place, which is  
16 understood. The proponent is here to make its case,  
17 the other parties, supporters or not, are here to, in  
18 effect, make whatever proper case they should in regard  
19 to what the proponent has put before the Board.

20 And then I suggest that inevitably there  
21 will be people arising asking for the right of reply.  
22 In a hearing of this complexity and length, it is  
23 absolutely certain that type of issue will arise, and  
24 I don't think any eyebrows will be raised when it does.

25 It seems to me though that what Mr.

1       Cosman is asking for is quite a dramatic departure from  
2       that and almost the right to put in a second proponent  
3       case, a second more focused, perhaps, proponent case.

4               And, if that should happen, then of  
5       course the other parties, particularly those who are  
6       not supporting the proponent's application, would find  
7       themselves, in effect, responding to two proponent  
8       cases. I suggest that it would simply get clumsy, that  
9       it is not necessary and that given the complexity and  
10      difficulty of the issues we are dealing with, to make  
11      the procedure now more complex and difficult would be a  
12      mistake.

13             Those are my submissions.

14             THE CHAIRMAN:. All right. And, Mr.  
15      Colborne, what is your position on limiting direct oral  
16      testimony in the manner suggested by Mr. Hunter?

17             MR. COLBORNE: I don't have instructions  
18      to take a position on that. I can certainly tell you  
19      this though, that we small parties with limited  
20      resources are being bled to death by the way the  
21      hearing is proceeding and I am certainly not faulting  
22      this panel or anything, it just seems to be the way it  
23      is happening.

24             We are being bled to death and anything  
25      that can prevent that so that we don't have to, simply

1 by reason of limited resources, walk out of here a  
2 quarter of the way or a third of the way through the  
3 hearing, would be welcome.

4 THE CHAIRMAN: More specifically, if the  
5 Ministry were compelled to limit its oral direct to a  
6 specified time, whether or not it is along the time  
7 lines suggested by Mr. Hunter, would your client be  
8 willing to restrict themselves in the same manner?

9 MR. COLBORNE: That is why I say I don't  
10 have instructions, so I cannot make submissions on  
11 that. I could seek those instructions.

12 Just simply as a counsel before this  
13 hearing, I don't mind stating my observation that I  
14 don't think that everything is being that could be done  
15 to prevent repetition and the very slow movement of  
16 evidence into the record.

17 THE CHAIRMAN: Thank you.

18 MR. COLBORNE: Thank you.

19 THE CHAIRMAN: I think if we could hear  
20 from you, sir, at this time.

21 MR. TAYLOR: Thank you. John Taylor,  
22 President of the Northwestern Associated Chambers of  
23 Commerce.

24 As an association, one of the things we  
25 are attempting to do is provide a coordination function

1 to enable our member chambers to really reasonably  
2 measure the impact of the proposal on their respective  
3 communities and to be able to make a reasonable  
4 presentation on homeground. And we represent 20  
5 communities all located in the area of the undertaking  
6 and their concerns are, to say the least, diverse. In  
7 other words, what may be of concern to one community  
8 may not necessarily be a concern of any priority to the  
9 next community.

10 In speaking to the motion, obviously our  
11 members have not had an opportunity to review the  
12 motions as they have been presented and I guess, not  
13 being a member of the learned community, I am not in a  
14 position to argue the legal implications. I can,  
15 however, make a couple of comments regarding the  
16 proposals.

17 We can certainly indicate a measure of  
18 agreement with the Ministry's proposal this morning,  
19 particularly as it relates to the schedule for the  
20 production of all witness statements. We believe it is  
21 important for our members to have the opportunity to  
22 see all of the things that are going to be presented.  
23 And we agree also, and it is really important to us,  
24 what is outlined on page 3, that the proposed terms and  
25 conditions be made available within a reasonable time



1       period for the parties to review the evidence before  
2       being required to file a formal statement of their  
3       proposals or witness statements.

4                   I think reasonable is the word I want to  
5       impact upon the Board and requires careful  
6       consideration in view of the difficulties which are  
7       encountered, not only by your association, but by many  
8       others in providing their members an opportunity to  
9       respond in a really meaningful way. That's why we are  
10      all here.

11                   As to the other comments, as I say I am  
12      not prepared to present arguments other than to say I  
13      was certainly happy to hear the Board reiterate their  
14      concern for the interested parties who are not always  
15      able to be directly involved in this process on a  
16      day-to-day basis.

17                   Perhaps one comment about the limitation  
18      on oral presentations. I certainly can't answer that  
19      and I am not prepared to endorse that suggestion,  
20      simply from the point of view of, I can't determine  
21      that when we don't really know what the full content of  
22      each panel is and it is important and it is significant  
23      to this country, this part of the country that all  
24      evidence be presented that will enable the Board to  
25      make the right decision. Certainly if there was a

1 decision to limit times, it must apply to everybody.

2 If the decision is made to move the  
3 process along, then it has to apply to everybody on an  
4 equal basis.

5 Those are my comments, Mr. Chairman.

6 Thank you.

7 THE CHAIRMAN: Thank you. Well, Mr.  
8 Campbell, it is a quarter after. I don't know how long  
9 you are going to be. Does it make sense to start now?

10 MR. CAMPBELL: I am not sure it does, Mr.  
11 Chairman. I talked to my friend Mr. Cosman, as you may  
12 have noticed. One proposal that we can do, as I say, I  
13 can get the afternoon flight so I can be here by say  
14 five or 5:15.

15 If Mr. Freidin wanted to proceed with  
16 Panel 6 on Tuesday and then say at five or 5:15,  
17 whenever a convenient time was found there, I would  
18 make my submission; Ms. Murphy could make her reply,  
19 Mr. Cosman could make his reply, that might mean  
20 sitting a little bit later on Tuesday but it would  
21 accommodate everybody's schedule, if that is seen as a  
22 reasonable proposition.

23 THE CHAIRMAN: Okay. I think that is a  
24 good suggestion. We will plan on sitting late Tuesday  
25 to finish off submissions with respect to the motions

1       today and then proceed with the evidence -- and  
2       continue with the evidence on Wednesday.

3                   And the Board, just to advise the parties,  
4       obviously a lot of information is coming before the  
5       Board with respect to these motions, a lot of parties  
6       are making submissions. The Ministry, of course, will  
7       want to probably deal with many of these submissions in  
8       reply and the Board will need a sufficient amount of  
9       time to fully consider everything.

10                   It does not necessarily intend to rule on  
11       these procedural matters next week. We are proceeding,  
12       nevertheless, under the same format. We would probably  
13       want to take the remainder of the week and weekend,  
14       possibly a day or so into the following week, to fully  
15       consider all the arguments before we hand out a ruling  
16       because whatever our ruling is, it is going to  
17       substantially affect the remainder of the proceedings.

18                   We want to take the amount of time  
19       necessary to formulate a ruling which will, in fact,  
20       assist everybody and the process itself. So do not  
21       look for a quick ruling next week.

22                   Well, ladies and gentlemen, I think at  
23       this point we can adjourn for the day and we will be  
24       here on Tuesday at 1:00 p.m.

25                   Thank you.

1 ---Whereupon the hearing adjourned at 2:05 p.m., to be  
2 reconvened on Tuesday, September 6th, 1988,  
3 commencing at 1:00 p.m.

4 (Copyright, 1985)

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